# (33,961)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1928

# No. 652

ALICE BARBEE WICK, APPELLANT,

*vs.*

CHELAN ELECTRIC COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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[fol. 1] [File endorsement omitted]

## IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

vs.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

NOTICE OF PETITION—Filed Sept. 17, 1926

The State of Washington to Alice Barbee Wick and Chelan County, Washington, a municipal corporation:

You, and each of you are hereby notified that the petitioner Chelan Electric Company, a corporation, has filed in the above entitled court, with the Clerk thereof, a petition showing that it is a public service corporation authorized to appropriate lands, real estate premises and property for the purpose of constructing a reservoir, dam and power plant to develop and utilize for railroad, lighting and other public purposes, the water power afforded by Lake Chelan and the Chelan River; that the petitioner has permits from the Supervisor of Hydraulics of the State of Washington to appropriate and store for beneficial uses substantially all the waters of Lake Chelan and the Chelan River; and a license from the Federal Power Commissioner under and by virtue of the Act of Congress approved June 10th, 1920 known as "The Federal Water Power Act" for the construction, operation and maintenance of the dam reservoirs, and other project works necessary or convenient for the development, transmission and utilization of the water power afforded by said Lake Chelan and the Chelan River and by raising and storing the waters thereof to the maximum elevation of 1,110 feet above mean sea level; that in order to develop and apply to the beneficial public uses above mentioned the waters of Lake Chelan and the Chelan River it is necessary for the pe-
[fol. 2] titioner to appropriate and acquire the perpetual

right to impound the waters of Lake Chelan and the Chelan River and to raise the same to the maximum elevation of 1,110 feet *feet* above mean sea level and to inundate and overflow to the maximum elevation of 1,110 feet above mean sea level the following described real estate situate in the County of Chelan, State of Washington, to-wit:

Government lots one (1) two (2), three (3) and four (4) and the southwest quarter of the southwest quarter of section three (3) Lots five (5) and six (6), section four (4); Lot one (1), section ten (10); Lot forty-two (42) section eleven (11); and lot fort*h*-three (43) all in township twenty-seven (27) north, range twenty-one (21) E. W. M. together with all shorelands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, and all littoral and riparian rights thereinto belonging or appertaining, subject to the right of the Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of Lot one (1), Section Ten (10) and Lot four (4), section three (3) township twenty-seven (27) North range twenty one (21) E. W. M. and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners date- December 6th, 1909 (Application No. 7077) under and by virtue of Chapter 125, Session Laws of 1907.

That the object of said proceeding is to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by the petitioners to the owner or owners, respectively, and to all tenants, encumbrancers and other- interested for the taking or injuriously affecting the lands, real estate and premises above described in the manner set forth in said petition, and for a release from all liability for all damages to said lands, real estate and premises, in any manner arising from the impounding and storing of the waters of said Lake Chelan and the Chelan River and raising the same to the maximum elevation of 1,110 feet above mean sea level, and to obtain a decree to the contemplated use for which said lands real estate, premises and property are sought

to be appropriated is a public object and use and that the public interest requires the prosecution of the aforesaid enterprise of the petitioner, and that said lands, real estate, premises and property sought to be appropriated and injuriously affected are required and necessary for the pur-
[fol. 3] poses to such enterprise.

Notice is further given that on the 11th day of October, 1926 at the hour of 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the petitioner will present said petition and proof in support thereof to said Superior Court for hearing and determination and for the fixing of a time at which a jury shall be called to determine the amount of compensation to be made and the parties to whom the same shall be paid.

Dated this 17" day of September, 1926.

Chelan Electric Company, by Post & Russell, 533 Exchange National Bank Building, Spokane, Washington. Thomas Balmer, Charles S. Albert, Edwin C. Mathias, 302 King Street Passenger Station, Seattle, Washington, Attorneys for Petitioner.

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[fol. 4] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

PETITION—Filed Sept. 17, 1926

To the Honorable Superior Court of the State of Washington in and for the County of Chelan and to the judge thereof:

The petitioner, Chelan Electric Company, respectfully shows:

I

That the petitioner, Chelan Electric Company, is a public service corporation organized and existing under the laws of the State of Washington, that it has complied with the laws of said State of Washington relating to such corporations, and has paid its annual license fee last due the State

of Washington and its license fees for all previous years, and that all of its corporate stock has been subscribed for and fully paid.

II

That the objects and purposes for which the petitioner was and is incorporated are, among others, to develop, adopt and utilize for railroad, lighting, and for other public purposes the water power afforded by Lake Chelan and the Chelan River; to construct, operate and maintain a plant or plants for the development and transmission of electric energy into the town of Chelan and into other cities, towns and places for public use; to erect, own and operate a plant or plants for furnishing such electric energy in such cities, towns and places for lighting the same and furnishing such energy to individuals and to public and private corporations and municipal bodies for public purposes; to erect and maintain dams and reservoirs, and to operate the same.

[fol. 5] III

That by its amended articles of incorporation the petitioner for the purpose of availing itself of the benefits of Chapter 159, Session Laws of 1907, entitled "An Act relating to the exercise of the power of eminent domain by corporations generating and transmitting electricity and using and selling the same for light and power," approved March 13th, 1907, (Remington's Compiled Statutes, Sections 5432-5434), has assumed the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality from the electricity generated and transmitted by it for public purposes and not needed by it therefor, and has provided in its said amended articles of incorporation that in respect of the purposes mentioned in said act it assumes and undertakes to and with the State of Washington and the inhabitants thereof the duties and obligations of a public service corporation.

IV

That the petitioner has a permit from the Supervisor of Hydraulics of the State of Washington to appropriate all

waters of Chelan River and Lake Chelan, subject to existing rights and to a reservation of not to exceed 33,000 acre-feet each year for irrigation and domestic uses on lands bordering and near the Lake, said 33,000 acre-feet, or such part of it which may be required for beneficial use on said lands to be so used only under permits issued by the State Supervisor of Hydraulics, and unless and until all of said 33,000 acre-feet is covered by valid appropriation, any unappropriated balance thereof is also available for use of the petitioner under the above mentioned permit from the State Supervisor of Hydraulics. That the petitioner also has a permit from the Supervisor of Hydraulics of the State of Washington to construct a reservoir and to store for beneficial use in Lake Chelan and the Chelan River the waters so covered by its appropriation permit first mentioned. That under and by virtue of said permits the petitioner is entitled to use the said waters of Lake Chelan [fol. 6] and the Chelan River in the development of electric power and energy for municipal lighting, railway operation, irrigation pumping and other uses permitted by law. That petitioner is a public service corporation as the same is defined in Chapter 117 of the Laws of 1911 of the State of Washington and acts amendatory thereto; that it has heretofore filed with the Public Service Commission, or its successor, the Department of Public Works, its schedule of rates for electric energy furnished to the public; that it has heretofore and does now recognize the right, power and authority of the Department of Public Works to regulate all its rates and service for and in the furnishing of electric energy to all its customers and the public generally, as provided in that statute.

V

That Lake Chelan is one of the navigable waters of the United States, and that the petitioner has a license from the Federal Power Commission under and by virtue of the Act of Congress approved June 10th, 1920, (41 Stat. 1063), known as "The Federal Water Power Act," for the construction, operation and maintenance of the dams, water conduits, reservoirs, power houses, transmission lines and other project works necessary or convenient for the devel-

opment, transmission and utilization of the water power afforded by the waters of said Lake Chelan and the Chelan River and by raising and storing such waters to the maximum elevation of 1,100 feet above mean sea level. That in and by said Federal Power Commission license it is provided, inter alia, as follows, to-wit:

"The licensee shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged; and in case of the development, transmission, distribution, sale or use of power in public service by the Licensee or by its customers engaged in public service within a state which has not authorized and empowered [fol. 7] a commission of other agency or agencies within said state to regulate and control the service to be rendered by the Licensee or by its customers engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control. The Commission hereby declares it to be its purpose to exercise the jurisdiction over any securities hereafter issued or assumed by the Licensee to the extent authorized under the provisions of sections 19 and/or 20 of the Act; and the Licensee shall not hereafter sell, pledge, repledge, or otherwise dispose of any of its own securities or assume any obligation or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, unless and until authorized by the Commission so to do; Provided, that the jurisdiction of the Commission shall cease and detemine as to each specific matter of regulation and control prescribed in this article as soon as the State shall have provided a commission or other authority for the regulating and control of that specific matter."

That the petitioner has accepted all of the terms and conditions of the said Federal Water Power Act of June 10th 1920, and the further conditions imposed in the said Federal Power Commission license.

VI

That in order to develop and apply to the beneficial public use above mentioned the waters of Lake Chelan and the Chelan River, as authorized by the above mentioned appropriation and reservoir permits from the State of Washington and the above mentioned license from the Federal Power Commission, and to meet the present and future demands and requirements of its cus omers and the public for electric energy used and to be used for public purposes, it is [fol. 8] necessary for the petitioner to construct, maintain and operate a dam and reservoir for the storage of said waters to the maximum elevation of 1,100 feet above mean sea level and for said purposes it is necessary that your petitioner acquire the perpetual right to impound the waters of Lake Chelan and the Chelan River and to raise the same to the maximum elevation of 1,100 feet above mean sea level and to inundate and overflow to the maximum elevation of 1,100 feet above mean sea level the following described real estate situate in the county of Chelan, State of Washington, particularly described as follows, to-wit:

"Government Lots one (1), two (2), three (3) and four (4) and the southwest quarter of the southwest quarter of Section three (3); Lots five (5) and (6), section four (4); Lot one (1) Section ten (10); Lot forty-two (42) Section Eleven (11), and Lot forty-three (43), all in Township twenty-seven (27) North, Range twenty-one (21) E. W. M., together with all shore lands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, and all littoral and riparian rights thereunto belonging or appertaining, subject to the right of the Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of Lot One (1), Section ten

(10), and Lot four (4), Section three (3), Township twenty-seven (27) North, Range twenty-one (21) E. W. M., and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners, dated December 6th, 1909 (Application No. 7077) under and by virtue of Chapter 125, Session Laws of 1907.

VII

That the object for which this proceeding is brought is to ascertain and determine the compensation to be made in money, irrespective of any benefits from any improvement proposed by the petitioner, to the owner or owners, respectively, and to all tenants, encumbrancers and others interested for the taking or injuriously affecting the lands, real estate and other premises above described in the manner above set forth, and for a release from all liability for all damages to the lands above described, in any manner arising from the impounding and storing of the waters of said Lake Chelan and the Chelan River and raising the same to the maximum elevation of 1,100 feet above mean sea level.

VIII

That the object for which said lands, real estate and premises are sought to be appropriated, acquired and injuriously [fol. 9] affected by your petitioner is a public object and use, and that the public interest requires the prosecution of the aforesaid enterprise of your petitioner, and that said lands, real estate, premises and property sought to be appropriated and injuriously affected are required and necessary for the purposes of such enterprise. That the petitioner, has already acquired through purchase the major portion of the property necessary for said power development.

IX

That the following are the names of each and every owner, encumbrancer and person or party interested in the above described property, or any part thereof, so far as the same can be ascertained from the public records or otherwise, namely: Alice Barbee Wick and Chelan County, Washington, a municipal corporation.

X

That in order to acquire title to said property above described it is necessary for your petitioner to condemn said property and to acquire the same for the public purposes aforesaid by appropriate proceedings under and by virtue of the power of eminent domain conferred upon your petitioner in common with other like corporations in and by the laws of the State of Washington, and your petitioner makes this petition for said purposes.

Wherefore your petitioner prays that after due notice given according to law, it may be adjudged and decreed by this court that the contemplated use for which the above described land, real estate and premises are sought to be appropriated is really a public object and use, and that the public interest requires the prosecution of said enterprise, and that said land, real estate and premises are required and necessary for the purposes of said enterprise; that a jury be empaneled to ascertain the compensation to be made in money, irrespective of any benefit from any improvements proposed by your petitioner, to the above named owners of said lands for the taking and injuriously affecting the same, or in case a jury be waived, then that the com-
[fol. 10] pensation to be made as aforesaid be ascertained and determined by the court or judge thereof, and that the court apportion the damages so found among the persons entitled thereto; and that a judgment or decree be entered when said compensation shall have been determined to the effect that upon payment thereof by the petitioner full title to said property shall be at once vested in the petitioner, and for such other relief as may be proper in the premises.

Dated this 17th day of September, 1926.

Chelan Electric Company, by Post & Russell, 533 Exchange National Bank Building, Spokane, Washington. Thomas Balmer, Charles S. Albert, Edwin C. Mathias, 302 King Street Passenger Station, Seattle, Washington, Attorneys for Petitioner.

*Duly sworn to by Thomas Balmer. Jurat omitted in printing.*

[fol. 11] In Superior Court of Chelan County

[Title omitted]

Affidavit of Service—Filed Sept. 22, 1926

State of Washington,
County of Chelan, ss:

Bery McManus, being *v*irst duly sworn, upon oath deposes and says that at all times herein mentioned he was and now is a citizen of the United States of America and resident of the State of Washington, over the age of twenty-one years, not a party to the above entitled action and competent to be a witness therein, that on the 17th day of September, 1926, he served the annexed notice and petition upon the defendant, Chelan County, a municipal corp. by delivering in the hands of and leaving with John Godfrey, Auditor, on the date aforesaid at Wenatchee, in Chelan County, Washington, a full true and correct cop*u* of the annexed Notice & Petition.

Service, $0.60.

(Signed) Bert McManus.

Subscribed and sworn to before me this 17th day of September, 1926. J. Godfrey, Co. Auditor. (Auditor's Seal.)

[File endorsement omitted.]

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[fol. 12] In Superior Court of Chelan County

Return on Non-resident—Filed Sept. 22, 1926

State of Washington,
County of Chelan, ss:

I, Bert McManus, Sheriff of Chelan County, Washington, do hereby certify that I received the annexed Notice and Petition on the 17th day of September, 1926, to serve upon the within named defendant to-wit: Alice Barbee Wick. I therefore made due and diligent — for — and was unable to find said defendant in Chelan County, Washington, and

I further certify upon information and belief that said defendant is not non-resident.

Dated at Wenatchee, Washington, this 18th day of September, 1926.

Bert McManus, Sheriff of Chelan County, Washington, by C. A. Collis, Deputy.

[File endorsement omitted.]

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[fols. 13 & 14] IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

AFFIDAVIT OF PUBLICATION—Filed Sept. 22, 1926

STATE OF WASHINGTON,
County of King, ss:

Edwin C. Mathias, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Chelan Electric Company, a corporation, petitioner in the above entitled action, and makes this affidavir for and on its behalf as a basis for the publication of notice to the respondent, Alice Barbee Wick; that the said Alice Barbee Wick, one of the respondents above named, is a person claiming interest in the real property described in the petition and sought to be condemned by the petitioner herein, and that said Alice Barbee Wick is a non-resident of the State of Washington.

Edwin C. Mathias.

Subscribed and sworn to before me this 20th day of September, 1926. H. F. Johnson, Notary Public in and for the State of Washington, Residing at Seattle.

[File endorsement omitted.]

[fol. 15] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

SPECIAL APPEARANCE AND MOTION TO QUASH—Filed Oct. 8, 1926

Comes now the above-named respondent Alice Barbee Wick appearing herein specially for the purpose of this motion only, and objects to the jurisdiction of this court over the person of this respondent, and moves the court to vacate, quash and set aside the pretended notice of filing and of hearing of the petition of the above-named petitioner as pretended to be served upon this respondent, for the following reasons and upon the following grounds, to-wit:

1. That the said pretended notice was and is illegally and irregularly issued.

2. That the said pretended — is not such as prescribed by law.

3. That the said pretended notice has not been served or returned as provided by law.

4. That the statutes of the State of Washington upon which the above-entitled proceeding is based do not provide for sufficient or adequate service of notice in such cases upon non-resident owners of property affected.

5. That said statutes do not provide either for personal service of such notice upon non-residents of the State of Washington or the mailing of a copy of such notice to non-residents as a prerequisite to the right of publication.

6. That the aforesaid pretended notice in the above-entitled action does not comply either in form or substance with the statutes of this state governing these proceedings, and does not constitute due notice.

7. That the effect of the service of the notice provided by the statutes of the State of Washington in this and similar proceedings against interested parties or property owners not residing within the state of Washington, and especially

upon those residing in distant states, is to permit the property or property rights of such non-resident owners to be confiscated and taken without due process of law.

8. That the act or statute of the state of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the State of Washington and is therefore unconstitutional and void.

[fol. 16] 9. That the act or statute of the state of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the United States, and is therefore unconstitutional and void.

10. That the court has no jurisdiction over the person of this respondent.

This motion is based upon the records and files in the above pretended action, and also upon the affidavit of Adrian W. Vollmer hereto attached.

Comes now the above-named respondent, Alice Barbee Wick appearing herein specially for the purpose of this motion only and objects to the jurisdiction of the court over the person of this respondent, and further moves the court to vacate, set aside and quash the pretended service of the notice of filing and hearing of petitioner's petition upon this respondent, for the following reasons and upon the following grounds, to-wit:

1. That the said pretended notice was and is illegal and irregularly issued.

2. That the said pretended notice is not such as prescribed by law.

3. That the said pretended notice has not been served or returned as provided by law.

4. That the statutes of the state of Washington upon which the above-entitled proceeding is based do not provide

for sufficient or adequate service of notice in such cases upon non-resident owners of property affected.

5. That said statutes do not provide either for personal service of such notice upon non-residents of the state of Washington or the mailing of a copy of such notice to non-residents as a prerequisite to the right of publication.

6. That the aforesaid pretended notice in the above-entitled action does not comply either in form or substance with the statutes of this state governing these proceedings, and does not constitute due notice.

7. That the effect of the service of the notice provided by the statutes of the State of Washington in this and similar proceedings against interested parties or property owners not residing within the State of Washington, and especially upon those residing in distant states, is to permit the property or property rights of such non-resident owners to be confiscated and taken without due process of law.

8. That the act or statute of the state of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the State of Washington, and is therefore unconstitutional and void.

9. That the act or statute of the State of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-
[fol. 17] resident owners or interested parties is contrary to the constitution of the United States and is therefore unconstitutional and void.

10. That the court has no jurisdiction over the person of this respondent.

This motion is based upon the records and files in the above pretended action and upon the affidavit of Ardien W. Vollmer hereto attached.

(Signed) D. C. Conover, Adrien W. Vollmer, Attorneys for Respondent Alice Barbee Wick, appearing specially. Office and P. O. Address: 1489 Dexter Horton Bldg., Seattle, Washington.

Service accepted and copy received this 8th day of Oct., 1926.

E. C. Mathias, Attorney for Petitioner.

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[fol. 18] In Superior Court of Chelan County

[Title omitted]

Order for Continuance—Filed Oct. 11, 1926

The above entitled proceeding came on to be heard before this court on the 11th day of October, 1926, upon the petition of the Chelan Electric Company, filed herein, Messrs. Post & Russell Charles S. Albert, and Edwin G. Matthias appearing as counsel for the petitioner, Messrs. Sumner & Adams, for Chelan County, and Messrs. D. C. Conover, Adrien W. Vollmer appearing specially for respondent Alice Barbee Wick upon a motion to quash the notice of filing and hearing of the petition and said petitioner having applied for a continuance of the hearing thereon and of said motion to the 4th day of November, 1926, and the court having heard the argument of counsel and being duly advised in the premises;

It is Ordered that the hearing upon the petition herein and upon said motion be and the same is hereby continued to and set for the 4th day of November, 1926 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, before this court at the court house in the City of Wenatchee, State of Washington.

Done in open court this 11th day of October, 1926.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 19] [File endorsement omitted]

In Superior Court of Chelan County

[Title omitted]

Affidavit of Publication—Filed Oct. 30, 1926

State of Washington,
County of Chelan, ss:

I, D. R. Stohl, being first duly sworn, on oath deposes and says, that I am the principal clerk of the World Pub-

lishing Co., a corporation organized and existing under the laws of the State of Washington, the owner and publisher of the Wenatchee Daily World, a legal daily newspaper printed and published at the office of the owner and publisher thereof in the City of Wenatchee, County of Chelan and State of Washington since prior to the year 1910; that I make this affidavit for and on behalf of said corporation; that said newspaper is a newspaper of general circulation in said county and state and has at all times been and now is printed and published in the English language and that the Notice in Chelan Electric Company, Petitioner, v. Alice Barbee Wick and Chelan County, respondents, No. —, a printed copy of which is hereunto attached was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper once each week for a period of three consecutive weeks, beginning on the 23rd day of September 1926 and ending on the 7th day of October 1926 both dates inclusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

That the full amount of the fee charged for the foregoing publication is the sum of $21.35.

D. R. Stohl.

Subscribed and sworn to before me this 8th day of [fol. 20] October, 1926. R. S. Ludington, Notary Public in and for the State of Washington, Residing at Wenatchee, Chelan County. (Notary Seal.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,
vs.
ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

NOTICE

The State of Washington to Alice Barbee Wick and Chelan County, Washington, a municipal corporation

You and each of you are hereby notified that the petitioner, Chelan Electric Company, a corporation, has filed

in the above entitled court, with the Clerk thereof, a petition showing that it is a public service corporation authorized to appropriate lands, real estate, premises and property for the purpose of constructing a reservoir, dam and power plant to develop and utilize for railroad, lighting and other public purposes, the water power afforded by Lake Chelan and the Chelan River; that the petitioner has permits from the Supervisor of Hydraulics of the State of Washington to appropriate and store for beneficial uses substantially all the waters of Lake Chelan and the Chelan River, and a license from the Federal Power Commission under and by virtue of the Act of Congress approved June 10th, 1920, known as "The Federal Water Power Act," for the construction, operation and maintenance of the dams, reservoirs and other project works necessary or convenient for the development, transmission and utilization of the water power afforded by said Lake Chelan and the Chelan River and by raising and storing the waters thereof to the maximum elevation of 1,100 feet above mean sea level; that in order to develop and apply to the beneficial public uses above mentioned the waters of Lake Chelan and the Chelan River it is necessary for the petitioner to appropriate and acquire the perpetual right to impound the waters of Lake Chelan and the Chelan River and to raise the same to the maximum elevation of 1,100 feet above mean sea level and to inundate and overflow to the maximum elevation of 1,100 feet above mean sea level the following described real estate situate in the County of Chelan, State of Washington, to-wit:

Government Lots one (1), two (2), three (3) and four (4), and the Southwest Quarter of the Southwest Quarter of Section three (3); Lots five (5) and six (6), Section four (4); Lot one (1), Section ten (10); Lot forty-two (42), Section eleven (11), and Lot forty-three (43), all in Township twenty-seven (27) North, Range twenty-one (21) E. W. M., together with all shore lands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, and all littoral and riparian rights thereunto belonging or appertaining, subject to the right of the

Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of Lot one (1), Section ten (10), and Lot four (4), Section three (3), Township twenty-seven (27) North, Range twenty-one (21) E. W. M., and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners, dated December 6th, 1909 (Application No. 7077), under and by virtue of Chapter 125, Session Laws of 1907.

That the object of said proceeding is to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by the petitioner, to the owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting the lands, real estate and premises above described, in the manner set forth in said petition, and for a release from all liability for all damages to said lands, real estate and premises, in any manner arising from the impounding and storing of the waters of said Lake Chelan and the Chelan River and raising the same to the maximum elevation of 1,100 feet above mean sea level, and to obtain a decree that the contemplated use for which said lands, real estate, premises and property are sought to be appropriated is a public object and use and that the public interest requires the prosecution of the aforesaid enterprise of the petitioner, and that said lands real estate, premises and property sought to be appropriated and injuriously affected are required and necessary for the purposes of such enterprise.

Notice is further given that on the 11th day of October, 1926, at the hour of 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the petitioner will present said petition and proof in support thereof to said Superior Court for hearing and determination and for the fixing of a time at which a jury shall be called to determine

the amount of compensation to be made and the parties to whom the same shall be paid.

Dated this 17th day of September, 1926.

Chelan Electric Company, by Post & Russell, 533 Exchange National Bank Bldg., Spokane, Washington. Thomas Balmer, Charles S. Albert, Edwin C. Matthias, 302 King Street Passenger Station, Seattle, Washington, Attorneys for Petitioner.

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[fol. 21] IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

NOTICE OF PETITION AND BOND FOR REMOVAL—Filed Oct. 30, 1926

To the above-named petitioner and to Post & Russell, Thomas Balmer, Charles S. Albert, and Edwin C. Mathias, its attorneys:

You and each of you will please take notice that Alice Barbee Wick, one of the above-named respondents, appearing herein specially for the purpose only of removing the above-entitled cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and that on Saturday, the 30th day of October, 1926, at 9:30 a. m., of said day, said respondent, Alice Barbee Wic*h*, will file in the above entitled court her petition and bond herein as required by law, for the removal of said cause from the above-entitled court to the District Court of the United States for the Eastern District of Washington, Northern Division, and also a bond in the sum of Five Hundred Dollars ($500.00) given on such removal according to law and the requirements of the statutes in such case made and provided, and copies of said bond and petition are herewith served, and that after the filing of said petition and bond, to-wit: at the hour of 9:30 o'clock A. M., of the aforesaid day, or as soon thereafter as counsel can be heard, the said respondent will present and call to the attention of the said Superior Court of the State of Washington for Chelan County, at the court house of

said Chelan County, in Wenatchee, Washington, the said petition and bond, and move the said Superior Court to accept said petition and bond and to approve said bond, and for an order of removal of said cause from the above-[fol. 22] entitled court to the said District Court of the United States for the Eastern District of Washington, Northern Division, said motion for removal to be made upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

D. C. Conover, Adrien W. Vollmer; Attorneys for said Petitioner and Respondent, appearing specially, as aforesaid.

Copy of the foregoing notice and of the bond and petition in the above entitled cause received this 22 day of October, 1926.

Charles S. Albert, Post & Russell, Thomas Balmer, E. C. Matthias, Attorneys for Petitioner.

[File endorsement omitted.]

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[fol. 23] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION—Filed Oct. 30, 1927

Your petitioner, Alice Barbee Wick, one of the respondents above-named, and appearing specially for the purpose only of the removal of the above-entitled cause, respectfully shows to this Honorable Court that she is one of the respondents in this suit, which is of a civil nature, and that the matter now in dispute in this cause exceeds the sum or value of $3,000.00, exclusive of interest and costs.

Your petitioner shows to this Honorable Court that there is in said suit a separable controversy which is wholly between citizens of different states and which can be fully

determined as between then, to-wit: a separable controversy between your said petitioner herein, who evers that she was at the time of the bringing of this suit and ever since has been and still is a citizen and resident of the State of Pennsylvania, and not a resident of the State of Washington, and that the said Chelan Electric Company, a corporation organized and existing under the laws of the State of Washington petitioner in the above-entitled proceeding or suit, who as your petitioner herein avers was then and ever since has been and still is a citizen of the State of Washington.

That the said controversy is of the following nature, viz: A proceeding by petition, for the purpose as alleged therein, "to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by the petitioner to the owner or owners, respec-[fol. 24] tively, and to all tenants, encumbrances and others interested for the taking or injuriously affecting the lands, real estate and other premises," in said petition described and hereinafter described, "for a release from all liability for all damages to the lands in any manner arising from the impounding or storing of the waters of Lake Chelan and the Chelan River, and raising the same to the maximum elevation of eleven hundred feet above mean seal level" by building a dam and doing other work necessary for the conversion of said Lake or River into a storage reservoir for the said impounding of said water.

The lands, real estate and other premises proposed to be taken or injuriously affected are situate in Chelan County, State of Washington, and are particularly described in said petition as follows:

Government Lots one (1) two (2), three (3) and four (4) and the southwest quarter of the southwest quarter of section three (3); Lots five (5) and six (6) section four (4); Lot one (1) section ten (10); Lot forty-two (42), Section eleven (11), and Lot forty-three (43); all in Township twenty-seven (27) North, Range twenty-one (21) E. W. M., together with all shore lands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above-described property, and all littoral and riparian rights thereunto belonging or appertaining.

That it is further claimed in the said petition of the said petitioner, Chelan Electric Company, (and is a part of said controversy) that said appropriation is sought subject to an alleged right on its part to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of said Lot one (1), Section ten (10) and said Lot Four (4), Section three (3), Township twenty-seven (27) North, Range twenty-one (21) E. W. M. and to overflow and inundate the same to the highwater mark of Lake Chelan, alleged to have been granted by the order of the State Board of Land Commissioners, dated December 6th, 1909, (application No. 7077) under and by virtue of Chapter 125, session Laws of 1907. [fol. 25] That the further purpose of said petition as alleged therein is to have the "contemplated use for which the above-described land, real estate and premises are sought to be applied" adjudged and decreed by said Superior Court as a Public object and use, and claiming that the public interest requires the prosecution of said enterprise.

That the other respondent in said cause is the said Chelan County, Washington, a municipal corporation and a citizen of the State of Washington; that said Chelan County is not a tenant, lienor or encumbrancer, and has no right, title, interest or estate whatsoever in any of the land, real estate or other premises owned by the said Alice Barbee Wick; that there are no taxes or other amounts due and owing by said Alice Barbee Wick to said Chelan County, and that the controversy between said Chelan Electric Company and said Alice Barbee Wick is a separable and distinct controversy between said Chelan Electric Company and said Alice Barbee Wick, your petitioner herein, who are citizens and residents of different states, as aforesaid, which can be wholly determined between said Chelan Electric Company and said Alice Barbee without the presence in this action of said other respondents, viz: said Chelan County, Washington, a municipal corporation.

That your petitioner desires to remove said cause to the United States District Court for the Eastern District of Washington, Northern Division, and your petitioner makes and files herewith a bond in the sum of Five Hundred

($500.00), with good and sufficient sirety for her entering in said District Court of the United States for the Eastern District of Washington, Northern Division, within thirty (30) days from the date of the filing of this petition a certified copy of the record of said cause, and for paying all costs that may be awarded by said District Court if it shall hold that said suit was wrongfully or improperly removed thereto.

[fol. 26-28] Wherefore your petitioner prays that this Honorable Court proceed no further herein except to accept this petition and said bond, as required by law, and to order said cause to be removed to said District Court of the United States for the Eastern District of Washington, Northern Division, and to order a transcript of the record herein be prepared and certified for transmission to said District Court as provided by law, and to stay all futher proceedings herein.

D. C. Conover, Adrien W. Vollmer, Attorneys for said Petitioner Herein, appearing specially, as aforesaid.

Office and Post Office address: 1489-90 Dexter Horton Building, Seattle, Washington.

*Duly sworn to by Adrien W. Vollmer. Jurat omitted in printing.*

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[fols. 29-31] In Superior Court of Chelan County

[Title omitted]

Objections to Removal to the United States Court—Filed Oct. 30, 1926

Now comes the above-named petitioner, Chelan Electric Company, a corporation, on the 30th day of October, 1926, at 9:30 o'clock in the forenoon of said day, and presents its objection to the above entitled court to the remocal of this cause to the District Court of the United States in and for the Eastern District of Washington, Northern Division, upon the following grounds:

1. That said United States District Court has no jurisdiction over this controversy of the parties hereto.

2. That the Petition for Removal presented at this time to this court was not filed in this court within the time limited by law.

3. That the controversy herein is one not wholly between citizens of different states.

4. That said controversy is not a separable controversy.

5. That no notice of hearing upon the petition for removal has been served upon Chelan County.

6. That said Chelan County is a lienor and encumbrancer upon and has the right, title and interest and estate in the lands, real estate and premises owned by the said Alice Barbee Wick and sought to be taken in these proceedings.

7. The amount in controversy does not exceed, exclusive of interest and costs, the sum of three thousand dollars ($3,000.00.)

Post & Russell, Charles S. Albert, Edwin C. Mathias,
Attorneys for Chelan Electric Company.

[File endorsement omitted.]

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[fol. 32] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

ORDER REMOVING CAUSE—Filed Oct. 30, 1926

The above entitled action came on to be heard before the above entitles court on the date hereinbelow named, upon the application of Alice Barbee Wick, one of the respondents herein, for the removal of said cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and the above named Chelan Electric Company having appeared and objected to the removal of said cause as in the petition for removal prayed; and it appearing that the petitioner at the time of the filing of said petition herein on this 30th day of October, 1926,

offered its bond in the sum of five hundred dollars ($500.00) as provided by law, with the United States Fidelity & Guaranty Company as surety, and that the United States Fidelity & Guaranty Company is good and sufficient surety; and it appearing to this court that it has no discretion to do other than grant the prayer of said petition for removal; Now therefore,

It is ordered and adjudged that this court does hereby accept and approve said bond and accept said petition, and does order that this cause be removed to the United States District Court of or the Eastern District of Washington, Northern Division, pursuant to the statutes of the United States, and the clerk of this court is hereby directed to make up a certified copy of the record in this cause for transmission to the clerk of said District Court of the United States forthwith, and that no further proceedings be had in the above entitled cause in this court.

Done in open court this 30th day of October, 1926.

W. O. Parr, Judge.

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[fol. 33] [File endorsements omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

vs.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

MOTION TO REMAND—Filed Nov. 1, 1926; in Superior Court, Nov. 4, 1926

Now comes the above named petitioner and appearing specially and for the sole purpose of making this motion, moves the court to remand this proceeding to the Superior Court of the State of Washington, in and for Chelan County, upon the following grounds:

First. That this court has no jurisdiction over this controversy or the parties hereto.

Second. That the petition for removal was not filed in said Superior Court within the time limited by law.

Third. That the controversy herein is not one wholly between citizens of different states.

Fourth. That the controversy herein between this petitioner and the said Alice Barbee Wick is not a *spe*arable and distinct controversy from that between said Chelan Electric Company, and Chelan County and that the controversy between the petitioner and the said Alice Barbee Wick cannot be wholly determined, or determined at all, without the presence in this action of the said Chelan County.

Fifth. That no notice of the hearing upon the petition for removal was ever served on Chelan County.

Sixth. That the said Chelan County is a lienor and encumbrancer upon and has a right, title, interest and estate in the land, real estate and premises owned by the said Alice Barbee Wick and sought to be taken in these proceedings.

Said motion will be made upon the transcript on file [fols. 34 & 35] herein, upon the affidavit of Edwin C. Matthias hereto attached and upon such other affidavits as may be presented to this court at the time the motion is heard.

The petitioner herein further prays the court for an order prescribing that this motion shall be heard on the record herein and upon affidavits, and for an order prescribing a shorter period for the service of this notice and moving papers and asks that the hearing of said motion be fixed for the 3rd day of November, 1926, at ten o'clock in the forenoon, upon the ground that an exigency and emergency exists, which requires the shortening of such period.

Post & Russell, Charles S. Albert, Edwin C. Matthias, Attorneys for Chelan Electric Company, appearing specially and for the sole purpose of moving to remand said cause to the above-mentioned State court.

Chelan County appearing specially and for the sole purpose of moving the above entitled court to remand said cause to the above mentioned state court, joins in the fore-

going motion to remand and asks the court, upon the grounds therein stated and upon the additional ground that the amount in controversy does not exceed the sum of Three Thousand Dollars, exclusive of interest and costs, to remand this proceeding to the Superior Court of the State of Washington, in and for Chelan County.

Sam R. Sumner, J. A. Adams, Attorneys for Chelan County, appearing specially and for the sole purpose of moving to remand said cause to the above-mentioned State court.

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[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF EDWIN C. MATTHIAS

STATE OF WASHINGTON,
County of King, ss:

Edwin C. Matthias, being first duly sworn, on oath deposes and saus that he is one of the attorneys for the petitioner, Chelan Electric Company, herein; that he has read the motion to remand herein and knows the contents thereof, and that the same is true in fact and is well founded in law; that said motion is not made for the purpose of delay.

That the above entitled proceeding is one of thirty-three similar proceedings returnable before the Superior Court of the State of Washington, in and for Chelan County, on the 4th day of November, 1926; that the court has fixed that time as the date for the hearing upon the question whether the contemplated use for which the land, real estate and premises described in the petition herein, and in the petitions in the said thirty-three similar proceedings, is sought to be appropriated is really a public use and whether the public interest requires the prosecution of the enterprise of said petitioner, and whether the land, real estate and premises sought to be appropriated are required and necessary for the purpose of such enterprise; that precisely the same question is involved in each of the said thirty-

three proceedings requiring the introduction of the same evidence in every instance, the only difference in the proceedings being in the description of the property sought to be taken in each instance; that the evidence necessary to be presented involves the production of numerous ex- [fol. 37] hibits prepared at considerable expense, consisting of certified copies of lengthy articles and amended articles of incorporation of different companies, certified license certificates, certified tariffs of rates of two companies on electricity filed with the Department of Public Works of the State of Washington, certified copies of hydraulic permits and certified copy of a license from the Federal Power Commission to the petitioner for the construction of the Chelan project, certified exemption certificate, blue prints showing lands involved, certified copies of lengthy contracts between Chelan Electric Company, the Great Northern Railway Company and the Washington Water Power Company and between the Washington Water Power Company and the Great Northern Railway Company, certified copies of the annual reports of the Department of Public Works of the State of Washington, specially prepared maps of the territory served by The Washington Water Power Company, special graphs of uses of power, and other documentary evidence, and at said hearing on said question the attendance will be required of numerous witnesses from Spokane, Seattle, Portland, Central Washington and other points, all of whom are busily engaged in occupations necessarily requiring their personal attention, some of whom are expert witnesses and many of whom will attend at considerable expense to petitioner, and it is very difficult to arrange a time convenient for all such witnesses to attend. That the judge of the said Superior Court of Chelan County has advised the litigants in all said cases that one hearing will be held on November 4th, in which testimony will be taken in all thirty-three cases, including the above entitled cause; that if said cases are not heard together the expense and inconvenience to witnesses and court will be multiplied by the number of such separate hearings so held, and that unnecessary expenses will be incurred if separate hearings are held which must necessarily be added to the cost of the public enterprise and eventually paid by the public and that the removal of this

[fol. 38] cause to this court was intended by respondent Wick and her attorneys to be for the purpose only of vexatious delay and to prevent petitioner herein from obtaining an early hearing on said question in all of said thirty-three proceedings.

Affiant further says that he is informed and believes the fact to be that no notice of the hearong on the petition for removal herein was ever served upon Chelan County, the other respondent herein, and that said Chelan County has not been served with copies of the said notice of removal, petition on removal or bond on removal herein.

Affiant further says that he has caused inquiry to be made and has ascertained that the County of Chelan has levied, in accordance with the laws and the statutes of the State of Washington taxes upon the property involved herein and described in the petition herein, in the sum of $842.52; that said taxes are due and payable on or before the 31st day of May, 1927, and that the said taxes so levied against the property of the respondent Wick herein by the respondent Chelan County are now, at the time of the commencement of this action were, and according to the laws and statutes of the State of Washington, ever since the first day of March, 1926, have been a lien and encumbrance upon said real estate involved in this proceeding and described in the petition herein. That under the laws and statutes of the State of Washington each and every owner, encumbrancer and other person or party interested in the property sought to be taken under eminent domain proceedings is a necessary and indispensable party to such proceeding, and that Chelan County in whose favor said lien for said taxes exists, is an encumbrancer and party interested in the property which is sought to be appropriated by the petitioner herein, and as such is a necessary and indispensable party.

Affiant further says that the time for the respondents, and each of them, to appear or plead or answer in this pro-[fol. 39] ceeding expired on the 11th day of October, 1926, and that on said 11th day of October, 1926, the respondent Chelan County appeared generally and the respondent Wick appeared specially by serving and filing motions directed against the notice and petition herein for an order of the court quashing the said notice and petition. That

the respondent Wick did not serve or file on the said 11th day of October, 1926, or any time prior thereto, upon the petitioner herein or its attorneys, its petition for removal or bond on removal or notice of hearing on said petition for removal, and the said petition and bond on removal and notice of hearing on said petition for removal on the part of the respondent Wick was not served upon the petitioner herein, or its attorneys, until the 22nd day of October, 1926, or eleven days after the time had expired within which said respondents should appear, plead or answer in said cause.

Edwin C. Matthias.

Subscribed and sworn to before me this 29th day of October, 1926. H. F. Jones, Notary Public in and for the State of Washington, Residing at Seattle. (Notary Seal.)

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[fols. 40 & 41] In United States District Court

[Title omitted]

Order to Show Cause—Filed Nov. 1, 1926

Upon reading the motion of the petitioner, Chelan Electric Company, and the affidavits in support thereof, and upon the application of said petitioner appearing by Charles S. Albert, its attorney, and it appearing to the court that an exigency and emergency exists whereby the time for service of notice of motion and moving papers should be shortened;

It is ordered that the hearing upon this motion of the petitioner herein to remand this cause to the Superior Court of Chelan County, State of Washington, be, and the same hereby is fixed to be heard by this court at ten o'clock in the forenoon, November third, 1926, in the Federal Building in the City of Spokane, and that copies of said motion to remand and moving papers and a copy of this order be served upon the attorneys for respondent, Alice Barbee Wick on this first day of November, 1926.

It is further ordered that said motion shall be heard on the transcript of record herein, the said motion to remand

and moving papers and such affidavits as may be served and filed in this court prior to the time fixed for the hearing of said motion.

J. Stanley Webster, Judge.

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[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO REMAND—Filed Nov. 3, 1926

STATE OF WASHINGTON,
County of Chelan, ss:

A. M. Anderson, being duly sworn says that he is assistant right of way land and tax commissioner for the Great Northern Railway Company, having his office and residence in Spokane, Washington, that he has had charge of acquiring the overflow rights and land for the Chelan Electric Company at and around Lake Chelan, that the familiarity of deponent with land values about Lake Chelan extends over a period of several years and is of an extensive nature, deponent having personally, during said time, made over 350 separate purchases of land and overflow rights at and around Lake Chelan.

That deponent knows the land of the respondent Alice Barbee Wick, described in the petition herein; that, except as hereinafter described, the entire cultivated and improved land of the said respondent is located several hundred feet above the proposed high water elevation of Lake Chelan; that the said land has a frontage on Lake Chelan of approximately two miles; that at least one and one-half miles of the said frontage is a rocky bluff, the walls of which rise almost perpendicularly from the shores of the lake; that the said rocky frontage is wholly without any value and will not be affected or in any manner damaged by the contemplated raising of the water of Lake Chelan; that the balance of said lake frontage is rocky and precipitous, ex-
[fol. 43] cept for a small flat located near the mouth of First Creek, the overflow area of which does not exceed two and one-half acres; that the entire land of the respondent

Alice Barbee Wick, subject to overflow, is wholly unimproved, except for some small, inexpensive summer camps, located on said flat, and some old delapidated and abandoned shacks of no value.

That, in the opinion of dependent, the total value of the land and rights to be acquired herein, including the damage if any to the land of the respondent Alice Barbee Wick not taken or overflowed does not exceed the sum of $1,500.00; that the total amount in controversy herein is less than $3,000, and, in the opinion of deponent, does not exceed the sum of $1,500.00.

A. M. Anderson.

Subscribed and sworn to before me this 30th day of October, 1926. Ernest E. Sargeant, Notary Public in and for the State of Washington, Residing at Spokane. (Seal.)

[File endorsement omitted.]

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[fol. 44] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF R. A. SCHEBLE—Filed Nov. 3, 1926.

STATE OF WASHINGTON,
County of Chelan, ss:

R. A. Scheble, being first duly sworn on his oath doth depose and say: That he is now and has been for more than five years last past, the Assessor of Chelan County; that he has examined the Notice and Petition of the Chelan Electric Company in the condemnation proceedings now pending in the above entitled court, and which has been removed to said Court from the Superior Court of the State of Washington in and for Chelan County, that he is well acquainted with the property described therein; that as such assessor he has, as a part of his regular duties, extended upon the tax rolls of said county the tax levied upon said property

for the year 1926; that the amount of taxes so levied and extended is the sum of $842.52; that said taxes are due and payable on or before the 31st day of May, 1927, and that the said taxes so levied against the said property of the above named Alice Barbee Wick by Chelan County are now and ever since the first day of March, 1926, have been a lien and an encumbrance upon the said property; and that the said Chelan County is an encumbrancer upon said property.

R. A. Scheble.

Subscribed and sworn to before me this 30th day of October, 1926. J. A. Adams, Notary Public in and for the State of Washington, Residing at Wenatchee Therein.

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[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. A. ADAMS—Filed Nov. 3, 1926

STATE OF WASHINGTON,
County of Chelan, ss:

J. A. Adams being first duly sworn, on his oath deposes and says that he is one of the attorneys for the above named Chelan County, and has been during the entire pendency of these proceedings; that no notice of a hearing upon the petition of Alice Barbee Wick to remove said cause from the Superior Court of the State of Washington in and for Chelan County to the District Court of the United States in and for the Eastern District of Washington, Northern Division, was ever served upon the said Chelan County, or upon this affiant, or Sam R. Sumner, the other attorney for said Chelan County at any time, either before the date of the hearing of said petition of removal, to-wit: October 30th, 1926, or on said date, or subsequent thereto.

J. A. Adams.

Subscribed and sworn to before me this 30th day of October, 1926. W. M. Emerson, Notary Public in and for the State of Washington, Residing at Wenatchee.

[File endorsement omitted.]

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[fol. 46] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REMANDING CAUSE—Filed Nov. 3, 1926

The above-entitled matter came duly on to be heard before this court on the third day of November, 1926, at 10:00 o'clock in the forenoon upon the special appearance and motion by the Chelan Electric Company, and Chelan County, Washington, to remand this cause to the superior court of the state of Washington in and for Chelan County, Charles S. Albert appearing specially for the purpose of making said motion to remand on behalf of said Chelan Electric Company and said Chelan County, Washington, and Terry Grant, and Adrien W. Vollmer appearing on behalf of Alice Barbee Wick in opposition thereto; and the court having duly considered the record on file and the arguments of counsel, and being duly advised in the premises;

It is ordered, that said motion to remand be and the same is hereby granted, and the clerk of this court is hereby directed to forthwith transmit the record in this cause and the proceedings therein to the superior court of the State of Washington in and for Chelan County, and said cause is hereby remended to said superior court for such other and further proceedings as may be necessary to be taken therein; and

It is further ordered, that the said Chelan Electric Com-
[fol. 47] pany and the said Chelan County Washington, do have and recover of the said Alice Barbee Wick their costs and disbursements herein provided by law.

J. Stanley Webster, Judge.

[fol. 48] In Superior Court of Chelan County

[Title omitted]

Order of Continuance—Filed Nov. 4, 1926

The above-entitled proceeding came on to be heard before this court on the 11th day of October, and was on that date continued to the 4th day of November, 1926, and now upon the petition of the Chelan Electric Company, filed herein, Post & Russell, Charles S. Albert and Edwin C. Mathias appearing as attorneys for the petitioner Sumner & Adams as attorneys for Chelan County and D. C. Conover and Adrien W. Vollmer, as attorneys for respondents Alice Barbee Wick, objecting to continuance and said petitioner having applied for a continuance of the hearing thereon to the 6th day of December, 1926, and the court having heard the arguments of counsel and being fully advised in the premises;

It is ordered, that the hearing upon the petition herein be, and the same is hereby continued to and set for the 6th day of December, 1926, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, before this court at the court house in the City of Wenatchee, State of Washington, to which ruling, counsel for Alice Barbee Wick excepts which exception is allowed.

Done in open court this 4 day of November, 1926.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 49] In Superior Court of Chelan County

[Title omitted]

Order for Continuance—Filed Dec. 6, 1926

The above-entitled proceeding came on to be heard before this court on the 6th day of December, 1926, upon the petition of the Chelan Electric Company, filed herein, Messrs. Post & Russell, Charles S. Albert and Edwin C.

Mathias appearing as attorneys for the petitioner, Messrs. Sumner & Adams for Chelan County, and said respondent Alice Barbee Wick appearing specially by her attorneys Messrs. D. C. Conover and Adrien W. Vollmer, upon a motion to quash the notice of filing and hearing of the petition, and said petitioner having applied for a continuance of the hearing thereon and of said motion to the 7th day of February 1927, the said respondent Alice Barbee Wick objecting thereto, and the court having heard the argument of counsel and being duly advised in the premises;

It is ordered, that the hearing upon the petition herein and upon said motion be, and the same is hereby continued to and set for the 7th day of February 1927, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, before this court at the court house in the city of Wenatchee, State of Washington, to which ruling counsel for Alice Barbee Wick, excepts and exception is allowed.

Done in open court this 6th day of December, 1926.

W. O. Parr.

[File endorsement omitted.]

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[fol. 50] In Superior Court of Chelan County

[Title omitted]

Order for Continuance—Filed Feb. 7 ,1927

The above entitled proceedings came on to be heard before this court on the 7th day of Fabruary, 1927, upon the application of the said Petitioner for a continuance of the hearing formerly set for February 7, 1927, and Messrs. Post & Russell, Charles S. Albert and Edwin C. Mathias appearing as attorneys for the petitioner, Messrs. Sumner & Adams for Chelan County, and said respondent Alice Barbee Wick appearing specially by her attorneys Messrs. D. C. Conover and Adrien W. Vollmer objecting to said continuance, and the court having heard the argument of counsel and being duly advised in the premises;

It is ordered that the hearing upon the petition herein and upon said motion be and the same is hereby continued

and set for the 28th day of February, 1927 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, before this court at the court house in the city of Wenatchee, State of Washington, to which ruling counsel for Alice Barbee Wick excepts and her exception is allowed.

Done in open court this 7 day of February, 1927.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 51] In Superior Court of Chelan County

[Title omitted]

Special Appearance and Demurrer

Comes now the above named respondent, Alice Barbee Wick, the above entitled court having heretofore granted her petition to remove this cause to the District Court of the United States for the Eastern District of Washington, Northern Division and the said United States District Court having heretofore remanded this cause to the above-entitled court on the application of petitioner, Chelan Electric Company, a corporation, and the said Superior Court of the State of Washington in and for the County of Chelan having overruled and denied her motions to vacate, quash and set aside the pretended service of the notice in this action, and to quash, vacate and set aside the pretended notice in this action and the said respondent Alice Barbee Wick not having waived her right to petition for the removal of this cause to the said United States District Court, or her said motions to quash, or either of them and still reserving and retaining her special appearance and her right to urge such removal and her right to question the jurisdiction of this court, and so specially appearing, demurs to the pretended petition on the following grounds, and each of them, to-wit:

1. That the said pretended petition does not state facts sufficient to constitute a cause of action.

2. That the said pretended petition does not state facts sufficient to entitled the said petitioner to the relief asked.

3. That the said petitioner has no legal capacity to sue.

4. That the said petition does not state facts sufficient to show that the petitioner is interested in this proceeding or that petitioner itself intends to use the property which it is seeking to condemn, and said petition does not show that the petitioner is the real party in interest.

5. That Chapter 159 of the Session Laws of the State of Washington for 1907, Sections 1, 2, 3, and 4, found on pages 349 and 350 are in violation of Article I, Sections 2, 3, 16 and 32, and are in violation of Article II Section 19 of the Constitution of the State of Washington, and each of them; [fol. 52] and are also in violation of other provisions of the constitution of the State of Washington.

6. That Chapter 159 of the Session Laws of said State of Washington for the year 1907, Sections 1, 2, 3, and 4, found on pages 349 and 350 are in violation of Amendment Article XIV, Section 1, and Amendment Article V of the Constitution of the United States, and each of them; and are also in violation of other provisions of the constitution of the United States.

7. That the said pretended petition shows that this court has no jurisdiction over the subject matter of this action or proceeding.

8. That the court has no jurisdiction over the person of the said respondent, Alice Barbee Wick.

9. That the statutes of the State of Washington relating to condemnation proceedings by corporations of the character of petitioner, under which these proceedings are instituted, are unconstitutional and void, especially as to nonresidents, being in violation of Article I, sections 2, 3, 16 and 32, and Article II, Section 19, of the Constitution of the State of Washington, and other provisions of the constitutions of said state of Washington.

10. That the statutes of the state of Washington relating to condemnation proceedings by corporations of the character of petitioner, under which these proceedings are instituted, are unconstitutional and void, especially as to nonresidents, being in violation of Article III Section 2, Arti- IV, Section 2, Amendment Article V, and Amendment Ar-

ticle XIV, Section 1, of the Constitution of the United States, and each of them, and are also in violation of other provisions of the Constitution of the United States.

11. That these proceedings are unconstitutional and void as to this respondent.

12. That there is a defect or misjoinder of parties respondent.

[fol. 53] Adrien W. Vollmer, Peters & Powell, Attorneys for Respondent Alice Barbee Wick, appearing specially.

Office: 1489-90 Dexter Horton Building, Seattle, Washington.

Service accepted and copy received this 28th day of Feb., 1927.

Post & Russell, Charles S. Albert, Edwin C. Mathias, Attorneys for Petitioner.

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[fol. 54] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

SPECIAL APPEARANCE AND MOTION TO MAKE MORE DEFINITE AND CERTAIN—Filed Feb. 28, 1927

Comes now the above named respondent, Alice Barbee Wick, the above entitled court hacing heretofore granted her petition to remove this cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and the said United States District Court having heretofore remanded this cause to the above entitled court on the application of the petitioner, Chelan Electric Company, a corporation, and the said Superior Court of the State of Washington in and for the said County of Chelan having overruled and denied her motions to vacate, quash and set aside the pretended service of the notice in this action, and to quash, vacate and set aside the

pretended notice in this action, and the said respondent, Alice Barbee Wick not having waived her right to petition the removal of this cause to the said United States District Court, or her said motions to quash, or either of them, and still reserving and retaining her special appearance and her right to urge such removal and her right to question the jurisdiction of this court, and ao specially appearing, makes and submits the following motions:

1. Moves the court to require the petitioner to make paragraph VI of its pretended petition to be more definite and certain by setting forth therein with reasonable certainty the portion or portions of the real estate described in said paragraph VI which the petitioner seeks to inundate or overflow as in said paragraph stated.

2. Moves the court to require the petitioner to make paragraph VI of said pretended petition more definite and certain by setting forth specifically the portion or portions of Government Lots 1, 2, 3, and 4, and the southwest quarter of the southwest quarter of Section 3, Lots 5 and 6, Section 4, Lot 1, Section 10, Lot 42 Section 11, and lot 43 and each of said several parcels of land, all in Township 27 North, Range 21 E. W. M., situated in said Chelan County, Washington, which said petitioner seeks to inundate or overflow, as in said paragraph referred to.

3. Moves the court to require the said petitioner to make [fol. 55] said paragraph VI of said pretended petition to be more definite and certain by setting forth specifically the portion or portions of the shore lands therein mentioned which petitioner seeks to inundate or overflow as therein referred to.

4. Moves the court to require the petitioner to make paragraph VI of said pretended petition more definite and certain by setting forth specifically by proper metes and bounds the portion or portions of the real estate referred to in said paragraph VI which petitioner seeks to inundate or overflow as therein referred to.

5. Moves the court to require the petitioner to make said pretended petition more definite and certain by setting specifically forth whether petitioner seeks to condemn and acquire the fee in or to any part of land belonging to this

respondent purported to be described or mentioned in said petition, or whether petitioner seeks to condemn and acquire solely an easement of flowage thereon.

6. In the event the court should deny the above motions numbered 1 to 4 inclusive, but without waiving the same, or either of them, respondent moves the court to require petitioner to furnish a bill of particulars setting out the information requested in said motions.

The foregoing motions are based upon the records and files in the above-entitled cause.

Adrien W. Vollmer, Peters & Powell, Attorneys for Respondent Alice Barbee Wick, appearing specially.

Office and Post Office address: 1489 Dexter Horton Building, Seattle, Washington.

Service accepted and copy received this 28th day of Feb., 1927.

Post & Russell, C. S. Albert, E. C. Mathias, Attorneys for Petitioner.

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[fol. 56] IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

ORDER DENYING MOTIONS TO QUASH—Filed Feb. 28, 1927

This cause came regularly on for hearing on this 28 day of Feb. 1927 before the court upon the special appearance of the above-named respondent Alice Barbee Wick, on her motions to vacate, quash and set aside the notice of the above-named petitioner and the service thereof, and the court having considered the motion, and being fully advised of the law and the premises, it is

Ordered, That the motion of the above-named respondent, Alice Barbee Wick, to vacate, quash and set aside the notice of said petitioner is denied, to which ruling of the court the said respondent excepts and exception is hereby allowed.

It is further ordered, That the motion of the said respondent Alice Barbee Wick, to vacate, quash and set aside

the service of the said notice be and the same hereby is denied, to which ruling of the court the said respondent excepts and exception is allowed.

Done in Open Court this 28 day of February, 1927.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 57] In Superior Court of Chelan County

[Title omitted]

Order Overruling Demurrer—Filed Mar. 1, 1927

This cause came regularly on for hearing upon the demurrer of the above-named respondent, Alice Barbee Wick, the respective parties appearing by their respective attorneys of record, the said respondent Alice Barbee Wick, reserving and retaining her special appearance and her right to urge the removal of this cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and her right to question the jurisdiction of this court; and the court having considered the said demurrer and the arguments of counsel, and being fully advised of the law and the premises, it is

Ordered, that the said demurrer be and the same hereby is overruled and denied, to which ruling of the court the said respondent excepts and said exception is allowed.

Done in Open Court this 28 day of Feb. 1927.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 58] In Superior Court of Chelan County

[Title omitted]

Order Overruling Motion to Make More Definite and Certain, etc.—Filed Mar. 1, 1927

This cause came regularly on for hearing upon the motion of the above named respondent, Alice Barbee Wick, to

make the petition more definite and certain, etc., as in said motion set forth, the respective parties appearing by their respective attorneys of record, the said respondent, Alice Barbee Wick, reserving and retaining her special appearance and her right to urge the removal of this cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and her right to question the jurisdiction of this court, and the court having considered the said motions and the arguments of counsel, and being fully advised of the law and the premises; it is

Ordered that the said motions be and the same hereby are each for the purpose of hearing on public use & Necessity overruled and denied, to which ruling of the court the said respondent excepts and said exception is allowed. Right reserved to respondent to re-present said motions prior to hearing as to damages.

Done in Open Court this 28 day of February, 1927.

W. O. Parr, Judge.

[File endorsement omitted.]

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[fol. 59] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

ORDER ON MOTIONS TO MAKE MORE DEFINITE AND CERTAIN AND FOR BILL OF PARTICULARS

The above actions having come regularly to be heard the 23rd day of March A. D. 1927, in open court upon the several motions to make more definite and certain and for Bills of Particulars in the above actions as consolidated by orders of the court heretofore made and entered,

Petitioner appearing by Post & Russell; Charles S. Albert and Edwin C. Matthias as its attorneys of record;

Respondents in actions Nos. 7389, 7441, 7478, 7651, 7604 and 7603 appearing by Shorts & Denny; O. P. Barrows and

Wm. A. Grimshaw, as their attorneys of record, and in action No. 7602 appearing by C. B. Hughes, as attorney of record;

It being agreed by counsel for the respective parties so appearing that said motions shall be heard at this time, and the court having heard and considered the arguments of counsel for the said respective parties and seen and considered the records and files and being fully advised in the premises,

It is by the court ordered that the motions to make more definite and certain of said severally appearing parties in action Numbers aforesaid, being motions numbered 1, 2, 3, 4, 5, and 6, be and each hereby are severally denied.

To each of which rulings the said appearing respondents severally duly except and their exceptions are hereby noted [fols. 60 & 61] of record.

And it is further ordered that said appearing respondents alternate motions for Bills of Particulars of the matters covered by said motions to make more definite and certain, numbers 1, 2, and 3, thereof, be and hereby are granted, and the petitioner be and hereby is required to furnish each said appearing respondent a bill of particulars setting forth by metes and bounds survey description the portion or portions of real estate referred to in Petitioner's Notice and Petition as to said several respondents, which Petitioner seeks to inundate and overflow by impounding the waters of Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1,100 feet above mean sea level; but not including lands which may be damaged by wave wash, erosion, seepage, inundation or any similar cause as a result of holding the waters of Lake Chelan up to said maximum elevation of 1,100 feet.

To each of which several rulings the petitioner duly excepts and its exceptions are hereby severally noted of record.

And it is further ordered that said appearing respondents alternative motions for Bills of Particulars of the matters covered by said motions to make more definite and certain, numbers 4, 5, and 6 be and severally are hereby denied.

To each of which rulings the severally appearing respondents duly except and their exceptions are hereby severally noted of record.

Done in open court this 28 day of March, A. D. 1927.

W. O. Parr, Judge.

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[fol. 62] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

ORDER OF CONSOLIDATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PUBLIC USE AND NECESSITY

The above-entitled causes came on regularly for hearing before the Honorable W. O. Parr, judge of the above entitled court, upon the application of the petitioner for an order adjudicating public use and necessity, the petitioner appearing by its officers and its attorneys, Messrs. Frank T. Post and Edwin C. Matthias, and the respondents appearing as follows: In cause No. 7391 the respondent Alice Barbee Wick by her attorneys, Adrian W. Vollmer, Peters & Powell and Robert H. Evans, the respondent Chelan County, Washington appeared by its prosecuting attorney Mr. J. A. Adams; in cause No. 7389 the respondents Leonard J. Woodruff and Jane Doe Woodruff, his wife, James P. Flick and Grace M. Flick, his wife, appeared by their attorneys Messrs. William A. Grimshaw and O. P. Barrows, and the respondent Chelan County, Washington, appeared by its prosecuting Attorney, Mr. J. A. Adams; In cause No. 7406 the respondent Katheryn V. Cowan and all respondents other than Chelan County, Washington, appeared by their attorneys W. B. Stratton and S. J. Chad-
[fol. 63] wick, the respondent Chelan County, Washington appeared by its prosecuting attorney J. A. Adams; In cause No. 7441 the respondents Schuyler J. Gray and Dora Gray, his wife, appeared in person and by their attorneys, Shorts & Denny, Wm. A. Grimshaw and O. P. Barrows, the respondents James F. Cargill and Jane Doe

Cargill, his wife, appeared not, and the respondent Chelan County, Washington, appeared by its prosecuting attorney, Mr. J. A. Adams; in cause No. 7442 the respondents W. A. Robison, Mamie R. Robison, an incompetent, and W. A. Robision, as guardian of the person and estate of Mamie R. Robison, an incompetent, appeared by their attorney, W. M. Emerson, the respondent Chelan County, Washington, appeared by its Prosecuting Attorney, Mr. J. A. Adams, and the respondent S. W. Sutton and Jane Doe Sutton, his wife, Mary L. Rupe and J. M. Rupe, her husband, Mary A. Edmunds, Clara E. Ridout and Palmer D. Edmunds, appeared not; in cause No. 7478 the respondent Etheldia Burge appeared by her attorneys Shorts & Denny, Wm. A. Grimshaw and O. P. Barrows, and the respondent Chelan County, Washington, appeared by its Prosecuting Attorney, Mr. J. A. Adams; in cause No. 7651 the respondent Richard H. Lord appeared by his attorneys Messrs. Shorts & Denny, Wm. A. Grimshaw and O. P. Barrows, and the respondent Chelan County, Washington, appeared by its prosecuting attorney, Mr. J. A. Adams, the respondent Northwestern and Pacific Hypotheekbank, a corporation, appeared not; In cause No. 7652 respondent Fern Ellingsworth Bennett, Evan McCord Bennett, a minor, and Fern Ellingsworth Bennett, administratrix of the estate of Walter Bennett, deceased, E. S. McCord, McCord Taylor and Jane Doe Taylor, his wife, appeared by their attorneys Peters & Powell and Robert H. Evans, the respondent J. B. Colt Cmpany, a corporation appeared by its attorney Mr. Fred Kemp, the respondent Chelan County, Washington appeared by its Prosecuting Attorney Mr. J. A. Adams, and the respondent Chelan Lumber Company, a corporation appeared not; In cause No. 7479 the respondent, [fol. 64] Chelan County, Washington, appeared by its prosecuting attorney, Mr. J. A. Adams, and the respondents I. E. Pershall and Jane Doe Pershall, his wife, appeared not; in Cause No. 7519 the respondent Edward Pletcher appeared by his attorney, Martin H. Easton, the respondent Chelan County, Washington, appeared by its Prosecuting Attorney, J. A. Adams, and the respondents May L. Rupe and J. M. Rupe, her husband, appeared not; in Cause No. 7450 the respondents Chelan County, Washington, appeared by its Prosecuting Attorney, Mr. J. A.

Adams, and the respondents O. P. Black and Jane Doe Black, husband and wife, appeared not; In Cause No. 7451 the respondent Chelan County, Washington appeared by its Prosecuting Attorney, Mr. J. A. Adams, and the respondents Mart B. Gilchrist and Jane Doe Gilchrist, husband and wife appeared not; In Cause No. 7452 the respondent Chelan County, Washington appeared by its Prosecuting Attorney, Mr. J. A. Adams, and the respondents Kitty Moran and *Jane* Doe Moran, wife and husband, Edmund M. Bartlett, Trustee, Harrietta Bartlett, Samuel Brown, and Jane Doe Brown, husband and wife, appeared not; In cause No. 7604 the respondent Chelan County, Washington, appeared by its Prosecuting Attorney Mr. J. A. Adams, and the respondents Abbie A. Norris, a widow, Sadie A. Mark (also known as Sadie Norris Mark) and L. E. Mark, her husband, and all other respondents appeared not; in Cause No. 7603 the respondents Schuyler J. Gray and Dora Gray, his wife, appeared by their attorneys, Shorts & Denny, Wm. A. Grimshaw and O. P. Barrows, and the respondent Chelan County, Washington, appeared by its prosecuting attorney, Mr. J. A. Adams; and in cause No. 7602 all respondents other than Chelan County, Washington, appeared by their attorneys C. B. Hughes, and the respondent Chelan County, Washington, appeared by its prosecuting Attorney, Mr. J. A. Adams.

Thereupon the respondents, Leonard J. Woodruff and Jane Doe Woodruff, his wife, James P. Flick and Grace M. [fol. 65] Flick, his wife, and Alice Barbee Wick, moved the court for separate hearings upon the question of public use and necessity, which motions were by the court severally denied and the exceptions of the said severally moving respondents thereto duly noted, whereupon the court ordered that, without waiving the special appearances for the proposed hearing and determination of the questions of public use and necessity, and of any appeal or writ of certiorari for the review of the order of this court upon those questions, all of the above numbered cases may be consolidated and treated as one cause, and decided by one order, and that if the question of damages in said causes should hereafter be tried there should be a separate trial and a separate verdict in each of said causes in all respects as though said causes had never been consolidated

for any purpose; And thereupon evidence was introduced by the petitioner in support of the allegations of its petitions and by the respondents in opposition thereto, and the court having duly heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, makes the following:

Findings of Fact

I

That each and all of the respondents in each and all of the above entitled causes were duly served in the manner prescribed by law with the notice and petition in the causes wherein they are respectively the respondents and that this court has jurisdiction of the respondents, of each and all of them, and of the subject matter of these proceedings; that the respective respondents are all the owners, encumbrancers and persons or parties interested in the property described in the petitions in the respective causes wherein they are respondents.

II

That the petitioner Chelan Electric Company, is a public service corporation organized and existing under the laws [fol. 66] of the State of Washington, that it has complied with the laws of the said State of Washington relating to such corporations, and has paid its annual license fee last due the State of Washington and its license fees for all previous years, and that all of its corporate stock has been subscribed for and fully paid.

III

That the object and purposes for which the petitioner was and is incorporated are:

"To develop, adopt, and utilize for railroad, lighting and general power purposes, the water power afforded by the Chelan Lake and the Chelan River; to construct, operate and maintain a plant or plants for the electric transmission of power, light and heat to the Town of Chelan, and to all other cities, towns and places economically accessible from

such source or sources of power, to erect, own and operate a plant or plants for furnishing light, heat and power in all such cities, towns and places, and to furnish light, heat and power therein for any purposes to individuals, public or private corporations and municipal bodies; to engage in supplying the Town of Chelan with light, heat and water for general, municipal and domestic uses; to purchase, erect, own and operate water works in connection therewith; to erect and maintain dams, reservoirs, mills, manufactories and to operate the same; to furnish light, heat and water for general, municipal and domestic purposes in any and all towns within economical reach of the source of power on the Chelan River; to construct a line of electric railroad from a point on the Great Northern Railroad near Wenatchee, Washington, running through the valley of the Columbia River in a general northerly direction to the said Lake Chelan and thence further north on the Columbia River and following up the Okanogan River to a point at or near the northern end of the State of Washington; of doing a general railroad business, carrying passengers and freight for hire; of exercising the right of eminent domain and acquiring the lands or other properties necessary in carrying on the business of the Company; of doing a general express business; of borrowing money, issuing bonds or other obligations and securing the payment thereof by mortgage, or other lien upon all or any portion of the property of the Company; of buying, owning, holding and voting stock in other corporations; of dealing in bonds, stock and other obligations of other corporations; of carying on a general merchandise business; of buying, owning and dealing in land and real estate; of entering into agreements with other transportation lines, whether rail or water, for the transmission and carrying of freight in connection with the lines operated by this corporation; of guaranteeing the indebtedness of, or otherwise subsiding, other transportation lines, which may be deemed to be of advantage in the business of this Company; of subsidizing or otherwise encouraging the location of mills, of all classes, kinds and character, within the boundary reached by the power lines or railroads of this Company; of laying out town sites, platting lands and improving the same for the purpose of

causing the location of inhabitants thereon; of acquiring lands in irrigating schemes and completing all necessary ditches, flumes or other means of conveying water for irrigating; of owning wharves, docks, and piers and doing a general wharfinger business thereon; of assuming and receiving all the benefits of Chapter 159 of the laws of 1907, [fol. 67] being that certain act entitled 'An Act relating to the exercise of the power of eminent domain by corporations generating and transmitting electricity and using and selling the same for light and power,' which said act was approved by the Governor on March 13, 1907, and for the purpose of availing itself of the said Act the said Chelan Electric Company does hereby assume the additional right to sell electric power and electric light to private customers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality and does hereby assume and undertake with the State of Washington and the inhabitants thereof that with respect to the duties and purposes aforesaid, it will and does hereby ssume and undertake the duties and purposes aforesaid, it will and does hereby assume and undertake the duties and obligations of a public service corporation and the said Chelan Electric Company does hereby assume all the duties and obligations required of companies availing themselves of the Act of the Legislature hereinbefore referred to and agrees that it will conform to and comply with all the requirements and obligations of the said Act; and in general of doing any and all things which the Trustees of the Company may deem necessary or advisable in carrying on the business of the corporation."

IV

That the petitioner has a permit from the Supervisor of Hydraulics of the State of Washington to appropriate all waters of the Chelan River and Lake Chelan, subject to existing rights and to a reservation of not to exceed 33,000 acre-feet each year for irrigation and domestic uses on lands bordering and near the Lake, said 33,000 acre-feet, or such part of it which may be required for beneficial use on said lands to be so used only under permits issued by the State Supervision of Hydraulics, and unless and until all of said 33,000 acre-feet is covered by valid appropria-

tion, any unappropriated balance thereof is also avail- for use of the petitioner under the above mentioned permit from the State Supervisor of Hydraulics. That the petitioner also has a permit from the Supervisor of Hydraulics of the State of Washington to construct a reservoir and to store for beneficial use in Lake Chelan and the Chelan River the waters so covered by its appropriation permit first mentioned. That under and by virtue of said permits the petitioner is entitled to use the said waters of Lake Chelan and the Chelan River in the development of electric power and energy for municipal lighting, railway, operation, irrigation pumping and other uses permitted by law. That the petitioner is a public service corporation as the same is [fol. 68] defined in Chapter 117 of the Laws of 1911 of the State of Washington and acts amendatory thereto; that it has heretofore filed with the Public Service Commission, or its successors, the Department of Public Works its schedule of rates for electricity furnished to the public; that it has heretofore and does not recognize the right, power and authority of the Department of Public Works to regulate all its rates and service for and in the furnishing of electric energy to all its customers and the public generally, as provided in that statute.

V

That Lake Chelan is one of the navigable waters of the United States, and that the petitioner has a license from the Federal Power Commission under and by virtue of the Act of Congress approved June 10, 1920 (41 Stat. 1063), known as "The Federal Water Power Act," for the construction, operation and maintenance of the dams, water conduits, reservoirs, power houses, transmission lines and other project works necessary or convenient for the development, transmission and utilization of the water power afforded by the waters of said Lake Chelan and the Chelan River and by raising and storing such waters to the maximum elevation of 1,100 feet above mean sea level. That in and by said Federal Power Commission License it is provided, inter alia, as follows, to-wit:

"The Licensee shall abide by such reasonable regulation of the services to be rendered to customers or con-

sumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the state in which the service is rendered or the rate charged; and in case of the service by the Licensee or by its customers engaged in public service within a state which has not authorized and empowered a commission or other agency or agencies within said state to regulate and control the services to be rendered by the Licensee or by its customers engaged in public service or the rates and charges of payment therefor, or the amount of character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the state shall have provided a commission or other authority for such regulation and control. The commission hereby declares it to be its purpose to exercise the jurisdiction over any securities hereafter issued or assumed by the Licensee to the extent authorized under the provisions of section 19 and/or 20 of the Act; and the Licensee shall not hereafter sell, pledge, repledge or otherwise dispose of any of its [fol. 69] own securities or assume any obligation or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person, natural of artificial, unless and until authorized by the Commission so to do; Provided, that the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this article as soon as the state shall have provided a commission or other authority for the regulation and control of that specific matter."

That the petitioner has accepted all of the terms and conditions of the said Federal Water Power Act of June 10th, 1920, and the further conditions imposed in the said Federal Power Commission License.

VI

That the Washington Water Power Company is a public service corporation organized and existing under the laws of the State of Washington, having been so organized in the year 1889; that it has complied with the laws of the State

of Washington relating to such corporations and has paid its annual license fee last due the state of Washington and its license fees for all previous years, and that all of its original corporate stock was subscribed for and fully paid and several increases of its capital to the aggregate amount of more than $20,000,000 have been fully paid; that it is the owner of all the capital stock of the Chelan Electric Company except the qualifying shares for the five members of the Board of Trustees, each holding and owning one share. That the Washington Water Power Company has its principal place of business in the City of Spokane; that for several years it has been regulated as to rates and service by the Department of Public Works of the State of Washington and has recognized and does now recognize the right, power and authority of the State of Washington through said Department of Public Works to reasonably regulate it as to rates of service, as provided by and in the statute passed by the Legislature of the State of Washington on March 18th 1911, known as Chapter 117 of the Laws of 1911, and all acts amendatory thereof. Said corporation was incorporated for the following purposes:

"To buy, own, sell, lease, improve and deal in real estate, water power, water power privileges, sites and franchises, mill and manufacturing sites and privileges, to erect, con- [fol. 70] struct, own, operate and maintain mills and manufactories, canals, aqueducts, flumes, dams, warehouses, offices, bridges, railroads, street railways, tramways, piers and structures, as may from time to time be deemed necessary for the best interest of the corporation, upon its own premises, or upon the premises leased or otherwise acquired by it, and to do all other things pertaining to and for the benefit of the property, to do and transact a general milling and manufacturing business; to lease, mortgage, sell and convey the whole or any part of its property, to borrow money on bonds, notes, bills of acceptance, or otherwise, of the corporation, upon such terms and for such time and upon such rate of interest as the Board of Trustees may determine, and to secure the payment of the same by mortgage upon the whole or any part of its property, real, personal or mixed, or by such other means as its Board of Trustees may deem expedient; to loan its own money, or dispose of, sell or convey its property upon such terms and

for such rate of interest as the Board of Trustees may deem expedient, and to receive therefor such notes, mortgages or other evidences of indebtedness as the Board of Trustees may determine; to buy, sell, hypothecate, hold, manage, vote and deal in the stock and bonds, notes and securities of other corporations having capital stock, for whatsoever business the same may be organized, and to that end in good faith, if desired, to acquire its own stocks and exchange the same for stocks, bonds, notes, and securities of such other corporations; to acquire, own, sell, lease, equip, maintain, operate, transmit, furnish, deliver, deal in electricity, electric power, electric light plants, and all kinds of electrical machinery and apparatus, and to erect, construct equip, maintain and operate poles, wires, and all other matters and things necessary or proper to fully enjoy each and all of said powers and privileges; to buy, own, lease, improve, deal in, maintain and conduct parks, natatoriums, places of amusement and all matters and things incident thereto or properly connected therewith; to buy, sell, mortgage, erect, construct, maintain and operate telephone lines, poles, wires, cross arms, and all matters and things incident thereto or proper or necessary therefor; to acquire, hold, buy, deal in, use, improve, maintain, develop, operate, sell, mortgage, lease, convey, encumber, hypothecate and dispose of water, water rights, dams, reservoirs, canals, conduits, ditches, flumes, pipe lines, lands, easements, right of way and buildings; and appropriate and divert water as and in the manner provided by law for any and all legal purposes in the States of Washington, and Idaho; to furnish, deliver, supply, lease, and sell water for any and all lawful uses and purposes; to convey, flow, supply, deliver and furnish water by and through conduits, canals, streams, ponds, reservoirs, ditches, flumes, canals, conduits and pipes, and to, upon and over any and all other places and premises that it may be lawful so to do, and to do any and all matters and things which may lawfully be done in order that said company may fully enjoy all the powers and privileges hereinbefore enumerated."

That it is under contract to furnish and does furnish, and has for many years furnished, to public service corporations in the State of Washington electric energy, by means

of which such corporations operate certain lines of railroad and electric railways in the City of Spokane and in various counties in Eastern Washington, and said public service corporations depend upon the said Washington Water Power Company for the same and it is legally liable to furnish such electric energy for said purposes. That it is also [fol. 71] under contract to furnish, has for many years furnished, and does now furnish numerous municipalities in Eastern Washington and the inhabitants thereof with electric energy for the purpose of lighting said municipalities and the streets and avenues thereof, the houses and homes therein, and for other public uses. That it has recently entered into a contract with the Great Northern Railway Company whereby it is obligated to furnish all of the electric energy that said railroad may require when and if it shall electrify its system east of Wenatchee or Appelyard, Washington, and as far east as Troy, Montana. The Washington Water Power Company is the owner of five hydro-electric power plants situate in the State of Washington upon the Spokane River, and through a subsidiary corporation is the owner of a hydro-electric power plant situate upon the Similkameen River in Okanogan County, Washington, and is also the owner of a hydro-electric power plant situate at Post Falls in the State of Idaho. That in the years 1925 and 1926 the power produced by said seven hydro-electric plants of the Washington Water Power Company has been insufficient to supply the needs of its customers, and it has been and is now obliged to purchase power from other companies in order to avoid a shortage. That by reason of the demands upon said company for electric energy to be furnished for the aforesaid purposes and of the increasing demands therefor and in order to accommodate the public using and depending upon the same, it has become and is necessary to construct, equip, build and operate another hydro-electric power plant for those purposes, and because thereof and before the commencement of those actions it purchased and acquired the capital stock of the Chelan Electric Company and has furnished and is furnishing to it the moneys required by it to construct an hydro-electric power plant on the Chelan River, which development requires the use of Chelan Lake as a reservoir in the manner authorized by the above mentioned reservoir

and appropriation permit from the state of Washington and the above mentioned license from the Federal Power Commission. The electric energy to be generated in said [fol. 72] new plant will be delivered to the Washington Water Power Company at the switchboard of said new plant for transmission by the Washington Water Power Company to its customers in the State of Washington.

VII

For twenty years or more the Washington Water Power Company has been transmitting and selling electric energy in Northern Idaho. About twenty years ago it constructed a power plant and controlling works at Post Falls, Idaho, on the Spokane River. Since that time it has been using Lake Cœur d' Alene in Idaho as a reservoir for the storage of flood waters of the springtime to be used during the low water season in the summer and fall for the generation of electric energy. For flowage easements over lands around the Lake and bordering on rivers flowing into the Lake it has paid approximately $700,000. The season of ordinary low water in the Spokane River begins about July first and ends about December first in each year, but some years it extends to a later period. In the year 1926, during the five months' period from July first to December first, the Washington Water Power Company sold in Idaho 54,800,000 kilowatt hours, and generated at its Post Falls plant 17,600,000 kilowatt hours, and there was generated in its hydro-electric plants on the Spokane River in the State of Washington as a result of said storage in Lake Cœur d' Alene 52,080,000 kilowatt hours, which could not have been generated if it had not acquired such storage.

The Washington Water Power Company contemplates selling the electric energy necessary for the operation of a zinc plant in Northern Idaho, which plant will be used in the reduction of zinc ores there mined. Said plant has not been constructed and no formal contract has as yet been entered into. Said zinc plant, if and when constructed, would consume during said five months' period approximately 33,000,000 kilowatt hours, or 80,000,000 kilowatt hours during a calendar year. During the twelve months' period in the year 1925 the number of kilowatt hours sold [fol. 73] by the Washington Water Power Company and

consumed in Idaho was approximately 114,000,000 and during the twelve months' period in the year 1926 the number of kilowatt hours sold by the Washington Water Power Company and consumed in Idaho was approximately 128,600,000. During the twelve months' period in 1925 approximately 48,650,000 kilowatt hours were generated at the Post Falls plant, and 51,000,000 kilowatt hours were generated in the hydro-electric plants on the Spokane River in the State of Washington, which could not have been so generated if the company had not had such storage in Lake Cœur d' Alene. The Post Falls plant is capable of producing a larger number of kilowatt hours than that stated above, but these plants are not run to capacity during the high water season because the limit of sale of electric energy is controlled by what can be produced during the low water period.

The Company has constructed and in operation high voltage transmission lines by which all of its power plants are connected, the same being shown upon a map in evidence, Exhibit 28-A. None of the power used or to be used in the State of Idaho will flow into the State of Idaho from the Chelan plant. Such power as may be used in the State of Idaho in excess of that produced at the Post Falls plant will flow into the State of Idaho from the plants situate upon the Spokane River, if and when there is an increase in the electric energy used in the State of Idaho, such increase will tend to decrease the use in the State of Washington of the electric energy generated in the power plants upon the Spokane River in the State of Washington, and tend to cause the flow of the energy produced at the Chelan plant farther east in the state of Washington than it would flow if there were no increase in the use of electric energy in the State of Idaho.

[fol. 74] VIII

That in order to develop and apply to the uses above mentioned the waters of Lake Chelan and the Chelan River, as authorized by the above mentioned appropriation and reservoir permits from the state of Washington and the above mentioned license from the Federal Power Commission, and to meet the present and future demands and requirements of the public and the customers of the Wash-

ington Water Power Company in the State of Washington for electric energy, it is necessary for the petitioner to construct, maintain and operate a dam and reservoir for the storage of said waters to the maximum elevation of 1100 feet, still water measurement, above mean sea level, and for said purposes it is necessary that the petitioner acquire the perpetual right to impound the waters of Lake Chelan and the Chelan River and to raise the same to the maximum elevation of 1100 feet, still water measurement, above mean sea level and to accordingly inundate and overflow the several parcels of real estate described in the several petitions in these consolidated causes and herein described. That in causes No. 7450 O. P. Black, et al., respondents, No. 7451, Mart B. Gilchrist, et al., respondents, No. 7452, Kitty Moran, et al., respondents, it is necessary that the petitioner acquire the fee title to the several parcels of real estate described in the several petitions in said three causes and herein described for the construction, maintenance and operation of tunnels, dams and reservoirs, power houses, water conduits, power, telephone, telegraph, transmission and cable lines, and other projects necessary or convenient for the development, transmission and utilization of the water power afforded by the waters of Chelan Lake and the Chelan River and by raising and storing such waters to the maximum elevation of 1100 feet, still water measurement, above mean sea level, and for rights of way for the same and for the location, construcion and mainenance of buildings, [fol. 75] sheds and other structures, and for the location, maintenance and storage of equipment and supplies of all kinds in connection with said project. That said lands, real estate, premises and property sought to be appropriated and injuriously affected are required and necessary for the purpose of such enterprise of the petitioner.

IX

That the object for which these proceedings are brought is to ascertain and determine the compensation to make in money, irrespective of any benefit from any improvement proposed by the petitioner, to the owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting the lands, real estate and other permises described in the petition,

in the manner above set forth, and for a release from all liability for all damages to the lands described in the petitions, in any manner arising from the impounding and storing of the waters of Lake Chelan and the Chelan River and raising the same to the said elevation of 1100 feet, still water measurement, above mean sea level and in the three causes specifically mentioned in the last preceding paragraph for all damages to the lands described in the petitions in the said three causes, in any manner arising from the construction, maintenance, and operation of tunnels, dams, and reservoirs for the storage of said waters to the maximum elevation of 1100 feet, still water measurement, above mean sea level, from the construction, maintenance and operation of power houses, water conduits, power, telephone, telegraph, transmission and cable lines, and other projects necessary or convenient for the development, transmission and utilization of the water power afforded by the waters of said Lake Chelan and the Chelan River and by raising and storing such waters to the maximum elevation of 1100 feet, still water measurement, above mean sea level, and from the location, construction and maintenance of buildings, sheds, and other structures and the storage of equipment and supplies of all kinds in connection with said project. That the petitioner has already acquired [fol. 76] through purchase the major portion of the property necessary for the said power development.

X

That the entire output of electric energy distributed and sold, and to be distributed and sold by the Washington Water Power Company, including the power to be produced by the proposed hydro-electric plant on the Chelan River, is, and will be devoted to a public use, and the object for which the lands, real estate, premises and property of the respondents are sought to be appropriated is, and will be a public object and use, and the public interest requires and will require the prosecution of the enterprise of the petitioner.

XI

That the plan of the petitioner for the development of the Chelan power is to construct a dam that will hold the waters

of Lake Chelan and the Chelan River at a maximum elevation of 1100 feet, still water measurement, above mean sea level, and to install the power generators in units. That in order to provide for the prospective needs of all the customers of the Washington Water Power Company in the State of Washington it is necessary that the first unit of the proposed plant be constructed and put in operation not later than the month of June, 1927, the second unit not later than the month of June, 1929, and the third and fourth units not later than the month of June, 1931. That in the prudent management of such a business it is wise to provide a producing capacity approximately fifteen per cent above the estimated needs of the customers of the business to insure service during periods of unforseen demand and unusual weather conditions, and that the findings above made do not include this margin of prudence.

XII

That the Washington Water Power Company intends to, and will conduct its electric light and power business in the future as in the past.

[fol. 77]

XIII

That in order to acquire title to the property described in the respective petitions it is necessary for said petitioner to condemn said property and to acquire the same for the purposes aforesaid by appropriate proceedings under and by virtue of the power of eminent domain conferred upon said petitioner in common with other like corporations in and by the laws of the State of Washington.

* * * * * * *

That on the 13th day of September, 1909, the Chelan Electric Company filed its petition with the Board of State Land Commissioners of the State of Washington, by which petition it sought the right to inundate and overflow to the high water of Lake Chelan estimated to be at the elevation of 1,085 feet, above sea level, all lands owned by the State of Washington along the shores of said Lake, which would in any way be affected by raising the waters of said Lake

to the estimated high water mark, said petition being filed in pursuance of Chapter 125 of the Session Laws of 1907; that the Board of State Land Commissioners sent a Surveyor to Lake Chelan, who investigated the plans and purposes of the Chelan Electric Company, and thereafter the said Board held a public hearing in the town of Chelan, a notice of such hearing being first duly published in a paper in the City of Wenatchee and in the town of Chelan. The Board also personally inspected the entire Lake shore at Lake Chelan, and after said hearing, at which a large number of residents of the Lake shore of said Lake were present and gave testimony, and after considering the facts brought before the Board by the petitioner and the facts learned as a result of the Board's survey, and from the Board's personal inspection of the Lake and the shores of the Lake, an order was entered by said Board, dated December 6, 1909, assessing the amount of damage to the lands belonging to the State of Washington, caused or to be caused by the Chelan Electric Company, or its successors or assigns, by perpetually backing and holding the waters of the said Lake Chelan upon and over the said lands [fol. 78] belonging to the State and overflowing and inundating the same to the high water mark estimated to be at the elevation of 1,085 feet, at the sum of fourteen thousand five hundred dollars ($14,500.00), and on the 18th day of December, 1909, the said Chelan Electric Company paid to the State of Washington, in accordance and in compliance with said order, the sum of fourteen thousand five hundred dollars ($14,500). A certified copy of said petition of the Chelan Electric Company and the order entered thereon and of the receipt acknowledging payment to the State of Washington of the said sum of fourteen thousand five hundred dollars ($14,500) were filed for record in the office of the Auditor of Chelan County, December 22, 1909, and at all times since said date have been a matter of public record in said office, and a copy of said petition, order and receipt appears as Exhibit 36 in the files of this consolidated cause.

Pursuant to the foregoing Findings of Fact the Court makes the following

Conclusions of Law

That the public interest requires the prosecution of the enterprise of the petitioner, and that the said land, real estate premises and other property sought to be appropriated in the respective causes are required and necessary for the purpose of said enterprise.

[fol. 79] Filed and recorded Sup. Ct. Journal Vol. 13, page 115-120, Mar. 24, 1927. Compared by B. & F. L. T. Armstrong, Clerk, by Fern Collis, Deputy.

It is therefore ordered, adjudged and decreed

I

That the above entitled causes be, and they are hereby consolidated into one cause, to be numbered in the files of this court "Nos. 7391, 7389, 7406, 7441, 7442, 7478, 7651, 7652, 7479, 7450, 7451, 7452, 7604, 7519, 7603 and 7602, Consolidated"; that such consolidation shall be effective for all purposes in connection with the trial and determination of the questions of public use and necessity in said causes, and of any appeal or writ of certiorari for the review of such determination, but that for the purpose of later trial, if any, upon the question of damages, the several causes shall proceed in all respects as though no consolidation had been had for any purpose.

II

That the contemplated use for which the lands, real estate, premises and other property herein and in the petitions in the respective causes described are sought to be appropriated is a public use, and that the public interest requires the prosecution of the aforesaid enterprise, and that the lands, real estate, premises and other property herein and in the petitions in the respective causes described, and sought to be appropriated, and the interest of the said respondents in the respective causes therein, to the extent herein provided, is required and necessary for the purpose of said enterprise, and that said petitioner is entitled to take said lands, real estate, premises and other property

and the interest of the said respondents in the respective causes therein, to the extent herein provided, for its corporate purposes, under and by virtue of the power of eminent domain, upon the payment to the respondents in the respective causes of just compensation to be determined according to law.

[fol. 80] The lands, real estate, premises and other property and the interest in the lands, real estate, premises and other property hereby authorized to be taken are more particularly described as follows, to-wit:

In Cause No. 7391

ALICE BARBEE WICK et al., Respondents

The right in perpetuity, to inundate and overflow to the maximum elevation of 1100 feet, still water measurement, above mean sea level, the following described real estate situate in the County of Chelan, State of Washington, more particularly described as follows, to-wit:

Government Lots One (1), Two (2), three (3) [illegible] Four (4) and the southwest quarter of the southwest quarter of Section three (3); Lots five (5) and six (6), Section four (4); Lot One (1), Section ten (10); Lot forty-two (42), Section Eleven (11) and Lot forty-three (43), all in Township twenty-seven (27) North Range Twenty-one (21) E. W. M., together with all shore lands of the second class situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, and all littoral and riparian rights thereunto belonging or appertaining, subject to the right of the Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of Lot One (1) Section ten (10) and Lot Four (4) Section three (3), Township twenty-seven (27) North Range Twenty-one (21) E. W. M., and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners, dated December 6th, 1909 (Application No. 7077) under and by virtue of Chapter 125, Session Laws of 1907, together with the right, in

perpetuity, to damage the above described land by wave wash, erosion, seepage, inundation or any similar cause as a result of holding the waters of Lake Chelan up to a maximum elevation of 1100 feet, still water measurement, above mean sea level.

* * * * * * *

It is further ordered that this matter be set down for hearing for the determination of the compensation to be paid to the respondents in the respective causes for the taking of their interest in the property hereinabove described.

Done in open Court this 23rd day of March, 1927

W. O. Parr, Judge.

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[fols. 81 & 82] In Superior Court of Chelan County

[Title omitted]

Notice of Setting for Trial—Filed Mar. 26, 1927

To the above-named respondents and to Messrs Adrian Vollmer, Peters & Powell, and Robert H. Evans, your attorneys:

You and each of you will please take notice that the petitioner will call the above entitled cause to the attention of the Honorable W. O. Parr, judge of the above entitled court, for setting for trial at the April Term of the above entitled court on Saturday, the 2nd day of April, 1927.

Dated at Seattle, Washington, this 24th day of March, 1927.

Post & Russell, Charles S. Albert, Edwin C. Matthias, Attorneys for Petitioner.

To the Clerk of the above-entitled court:

Please note the above named cause on your trial calendar for setting for trial on Saturday, April 2nd, 1927.

Post & Russell, Charles S. Albert, Edwin C. Matthias, Attorneys for Petitioner.

Service of the within Note of Issue by receipt of copy acknowledged this 25th day of March, 1927.

Peters & Powell, Attorneys for Respondent Alice Barbee Wick.

[File endorsement omitted.]

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[fol. 83] [File endorsement omitted]

SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

EXCEPTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PUBLIC USE AND NECESSITY—Filed March 29, 1927

Comes now the respondent Alice Barbee Wick, in action No. 7391, specially appearing by Peters & Powell, Robert H. Evans and Adrien W. Vollmer, reserving her right to propose further findings and conclusions as heretofore granted by said court and reserving her right to file further exceptions and excepts to the Findings of Fact and Conclusions of Law and Order of Public Use and Necessity herein entered on the 23rd day of March, 1927, as follows:

I

That said order failed to state that said Alice Barbee Wick appeared specially by her attorneys Peters & Powell, Robert H. Evans and Adrien W. Vollmer.

II

The said respondent excepts to Paragraph 1 of the Findings of Fact.

III

The said respondent excepts to paragraph 2 of Findings of Fact.

[fol. 84]

IV

The said respondent excepts to paragraph 3 of Findings of Fact.

V

The said respondent excepts to paragraph 4 of Fidings of Fact.

VI

The said respondent excepts to paragraph 5 of Findings of Fact.

VII

The said respondent excepts to paragraph 6 of Findings of fact.

VIII

The said respondent excepts to paragraph 7 of Findings of Fact.

IX

The said respondent excepts to paragraph 8 of Findings of fact.

X

The said respondent excepts to paragraph 9 of Findings of Fact.

XI

The said respondent excepts to paragraph 10 of Findings of fact.

XII

The said respondent excepts to paragraph 11 of Findings of Fact.

XIII

The said respondent excepts to paragraph 12 of Findings of Fact.

[fol. 85]

XIV

The said respondent excepts to paragraph 13 of Findings of Fact.

XV

The said respondent excepts to paragraph 14 of Findings of Fact.

XVI

The said respondent excepts to Paragraph 1 of Conclusion of law.

XVII

The said respondent excepts to the order of public use and necessity entered herein, and each and every part thereof.

XVIII

The said respondent excepts to the failure of the court to make and adopt Conclusion of Law No. 1, as proposed by respondent.

XIX

The said respondent excepts to the failure of the court to make and adopt alternative Conclusion of Law No. 1 as proposed by the respondent.

XX

The said respondent excepts to the failure of the court to make and adopt alternative Conclusion of Law No. 2 as proposed by the respondent.

XXI

The said respondent excepts to the failure of the court to make and adopt the following proposal of the respondent to insert in the order and decree of public use and necessity the following:

In the first line thereof after the words "That the contemplated use" insert "only within the State of Washington" and in the thirteenth line thereof, after the words, "for its corporate purposes" insert "for use only within the State of Washington."

Peters & Powell, by A. W. V., Peters & Powell, Robert H. Evans, per A. W. V., Robert H. Evans,
[fol. 86] Adrien W. Vollmer, Adrien W. Vollmer, Attorneys for said Respondent.

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[fol. 87] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

EXCEPTIONS TO REFUSAL OF THE COURT TO SIGN PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 30, 1927

Comes now the respondent, Alice Barbee Wick, in Cause No. 7391, appears specially by Peters & Powell, Robert H. Evans, and Adrien W. Vollmer, excepts to the court's refusal to sign proposed Findings of Fact and Conclusions of Law in said cause, as follows:

I

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 1.

II

Respondent excepts to the Court's refusal to sign proposed Finding of Fact No. 2.

III

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 3.

IV

Respondent excepts to the Court's refusal to sign proposed Finding of Fact No. 4.

[fol. 88]

V

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 5.

VI

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 6.

VII

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 7.

VIII

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 8.

IX

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 9.

X

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 10.

XI

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 11.

XII

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 12.

XIII

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 13.

XIV

Respondent excepts to the court's refusal to sign proposed Finding of Fact No. 14.

XV

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 1.

[fol. 89] XVI

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 2.

XVII

Respondent excepts to the court's refusal to sign proposed Concluson of Law No. 3.

XVIII

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 4.

XIX

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 5.

XX

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 6.

XXI

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 7.

XXII

Respondent excepts to the court's refusal to sign proposed Conclusion of Law No. 8.

Peters & Powell, per A. W. V. Peters & Powell.
Robert H. Evans, per A. W. V. Robert H. Evans.
Adrien W. Vollmer, Adrien W. Vollmer.

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[fol. 90] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

RESPONDENT'S PROPOSED FINDINGS OF FACT—Filed March 30, 1927

Comes now the respondent, Alice Barbee Wick, in cause No. 7391, appearing specially by her attorneys Peters & Powell, Robert H. Evans and Adrien W. Vollmer, pursuant to permission heretofore granted by the above entitled court files further and supplemental Findings of Fact and Conclusions of Law:

I

That the said respondent, Alice Barbee Wick is alleged by petitioner to have been served by publication and that said service was inadequate and insufficient, and not in the manner prescribed by law and that the court had no jurisdiction of the said respondent, Alice Barbee Wick, and of the subject matter of this suit.

II

That the Chelan Electric Company is not a public service corporation.

[fol. 91]

III

That the object and purposes for which the petitioner in said cause was incorporated was not for public service.

IV

That under and by virtue of the permits recited in the petitioner's petition, the said petitioner has no right to use the waters of Lake Chelan and the Chelan River for the purpose of overflowing and inundating the lands of the respondents, Alice Barbee Wick, as described in said petition for the purposes mentioned in said petition, and that petitioner is not a public service corporation.

V

That part of the lands in the above entitled cause against Alice Barbee Wick, proposed to be overflowed and inundated by the petitioner is a public road or highway much used for motor and other traffic not mentioned or described in said petition and that said petitioner has no right to overflow and inundate the same.

VI

That the petitioner proposes to raise the waters of Lake Chelan to a still water elevation of 1,100 feet above mean sea level and that in doing si it will necessarily damage, overflow and inundate the respondent's lands above the said 1,100 foot level by action of the waves, sudden freshets and other causes, and that in so doing it will violate the license from the Federal Power Commission recited by the petitioner under which the petitioner alleges it has a permit to raise the waters of Lake Chelan "to the maximum elevation of 1,100 feet mean sea level."

That said permit permits the raising of the Lake for the generation of power for use only within the State of Washington as will appear by reference to the terms of said permit.

VII

That the Washington Water Power Company is not a [fol. 92] party of record to the above recited cause but that the Chelan Electric Company, the petitioner proposes to sell all of its power to said Washington Water Power Company to be used by said Company in the State of Washington and elsewhere in the United States and in the prov-

ince of British Columbia and elsewhere in the Dominion of Canada, and that said Washington Water Power Company is under contract to furnish said power for interstate and intrastate purposes and commerce.

VIII

That when the power from the Chelan Project is commingled with power generated from other projects both within and without the State of Washington it is impossible to segregate it or identify it.

IX

That the chief purpose of the Chelan Project is to convert said Lake Chelan into a storage reservoir to take care of a shortage of power outside the State of Washington in low water season and that the amount of power generated by any plant when calculated merely in kilowatt hours produced, is no indication of its proportionate capacity to supply current during low water season.

X

That it is not necessary for petitioner to convert Lake Chelan into a storage reservoir for the purpose of supplying any shortage in the State of Washington, as there are innumerable power sites on the Columbia River and elsewhere in the said State, available for said purpose, the development of which would improve navigation without marring one of the greatest scenic and thus economic assets of the State of Washington.

XI

That the entire output of petitioner will not be devoted to public use, but will be sold to one customer, the Washington Water Power Company, and by it to be used for public [fol. 93] and private purposes.

XII

That sufficient power can be generated to supply the requirements of the petitioner without raising the waters of

Lake Chelan above high water level of about 1,085 feet above mean sea level.

XIII

That the court has no method of knowing that the Washington Water Power Company intends to, and will, conduct its electric light and power business in the future as in the past.

XIV

That the respondent, Alice Barbee Wick owns all of the shore land described in the petitioner's petition and that all of said shore land, excepting as stated in petitioner's petition, was acquired prior to petitioner's alleged right to overflow and inundate certain of the shore lands on Lake Chelan up to the ordinary high water mark of 1,085 feet above mean sea level.

Presented and refused this 3/30/27.

W. O. Parr, Judge.

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[fols. 94-250] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

NOTICE OF SETTING FOR TRIAL—Filed April 15, 1927

To the above-named Respondents and to Messrs. Adrien Vollmer, Peters & Powell, and Robert H. Evans, your attorneys:

You and each of you will please take notice that the petitioner will call the above entitled cause to the attention of the Honorable W. O. Parr, judge of the above entitled court, for setting for trial at the April term of the above entitled court on Saturday, the 30th day of April, 1927.

Dated at Seattle, Washington, this 12th day of April, 1927.

Post & Russell, Charles S. Albert, Edwin C. Matthias, Attorneys for Petitioner.

To the Clerk of the above entitled court:

Please note the above named cause on your trial calendar for setting for trial on Saturday, April 30th, 1927.

Post & Russell, Charles S. Albert, Edwin C. Matthias.

Service of within note of issue by receipt of copy acknowledged this — day of April, 1927.

—— ——, Attorneys for Respondent Alice Barbee Wick.

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[fol. 251] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

v.

ALICE BARBEE WICK et al., Respondents

BILL OF PARTICULARS—Filed April 27, 1927

Comes now the petitioner in the above entitled cause, in compliance with the order of the court heretofore entered herein and furnishes the following metes and bounds survey description of the portion or portions of real estate referred to in the notice and petition herein, and more particularly set forth in the order of public use and necessity heretofore entered herein, which petitioner seeks the right, in perpetuity, to inundate and overflow by impounding the waters of Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1,100 feet, still water measurement, above the sea level; said lands being situated in the County of Chelan, State of Washington, and the said metes and bounds survey description being as follows, to-wit:

All that part of Government Lot 43, Section 12, Township 27 North Range 21 E. W. M., together with all shore lands of the second class, situated in front of, adjacent to or abutting upon that portion of the government meander line lying in front of the above described property more particularly described as follows, to-wit: Beginning at a point in the west boundary of section 12 distant 3589.1 feet from the southwest corner thereof thence in a southeasterly direction along a direct line making a southeasterly included angle of 87 degrees and 44 minutes with said boundary a distance of 123.6 feet, thence angle right 35 degrees 22 minutes 229.8 feet, thence angle right 4 degrees 35 minutes 173.6 feet, thence angle right 4 degrees 31 minutes 95.2 feet, thence angle right 12 degrees 45 minutes 246.2 feet, thence angle left 13 degrees 42 minutes 192.4 feet, thence angle right 5 degrees 19 minutes 121.8 feet, thence angle right 15 degrees 25 minutes 228.7 feet, thence angle left 18 degrees 26 minutes 368.1 feet, thence angle left 16 degrees 42 minutes 128.5 feet, thence angle right 7 degrees 43½ minutes 122.1 feet, thence angle left 2 degrees 36 minutes 133.7 feet, thence angle right 4 degrees 10 minutes 91.1 feet, thence angle left 7 degrees 25 minutes 138.4 feet; thence angle right 4 degrees 36 minutes 143.9 feet; thence angle right 7 degrees 8 minutes 202.6 feet, thence angle left 26 degrees 11½ minutes 115.7 feet, thence angle right 25 degrees 35 minutes 105.4 feet, thence angle left 31 degrees 57 minutes 198.6 feet, thence angle right 12 degrees 51 minutes 231.2 [fol. 252] feet, thence angle left 34 degrees 38 minutes 134.2 feet, thence angle right 20 degrees 52 minutes 89.9 feet to a point in the east boundary line of Lot 43, Section 12, distant 874.6 feet from the southeast corner thereof, thence north along said boundary a distance of 168.0 feet more or less to the northerly boundary of the shore lands thence northwesterly along said boundary of shore lands lying in front of Government Lot 43 to an intersection with west boundary of Section 12, (produced) thence south along the west boundary of Section 12 a distance of 125.0 feet more or less to the point of beginning, containing an area of 7.10 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 42 and 43, Section 11, Township 27 North Range 21 E. W. M., together with all

shore lands of the second class, situated in front of, adjacent to or abutting upon that portion of the Government Meander Line in front of the above described property more particularly described as follows, to-wit: Beginning at a point in the east boundary line of Section 11, Township 27 North, Range 21 E. W. M., distant 3589.1 feet from the southeast corner thereof, thence northwesterly along a direct line making a northwesterly included angle of 87 degrees and 44 minutes with said boundary a distance of 20.0 feet, thence angle right 20 degrees 15 minutes 96.5 feet, thence angle left 19 degrees 17 minutes 132.5 feet, thence angle left 31 degrees 12 minutes 204.8 feet, thence angle right 19 degrees 58 minutes 305.5 feet, thence angle right 24 degrees 1 minute 341.6 feet; thence angle left 12 degrees 9 minutes 257.5 feet, thence angle left 4 degrees 20 minutes 580.0 feet, thence angle right 7 degrees 6 minutes 170.0 feet, thence angle left 24 degrees 5 minutes 250.0 feet, thence angle right 11 degrees 21 minutes 182.0 feet, thence angle left 27 degrees 22 minutes 143.0 feet, thence angle right 23 degrees 38 minutes 300.0 feet, thence angle right 17 degrees 44 minutes 133.0 feet, thence angle right 13 degrees 55 minutes 222.0 feet, thence angle left 18 degrees 55 minutes 97.0 feet, thence angle left 14 degrees 40 minutes 103.0 feet, thence angle right 22 degrees 28 minutes 240.0 feet, thence angle right 27 degrees 53 minutes 395.0 feet, thence angle left 20 degrees 40 minutes 78.0 feet, thence angle left 26 degrees 10 minutes 119.0 feet; thence angle right 17 degrees 35 minutes 89.0 feet, thence angle right 24 degrees 20 minutes 287.0 feet, thence angle left 15 degrees 46 minutes 165.0 feet, thence angle right 30 degrees 12 minutes 241.2 feet, thence angle left 14 degrees 54 minutes 173.0 feet thence angle right 15 degrees 33 minutes 115.0 feet, thence angle left 11 degrees 49 minutes 194.0 feet, thence angle right 16 degrees 7 minutes 160.0 feet to a point in the west boundary line of Section 11, distant 4525.0 feet from the southwest corner thereof thence north along said boundary of section 11 a distance of 55.0 feet, more or less to the northerly boundary of the shore lands, thence southeasterly along said boundary of shore lands lying in front of Government Lots 42 and 43 to an intersection with the east boundary (produced) Section 11, thence south along the east boundary of section 11 a distance of 125.0

feet more or less to the point of beginning, containing an area of 7.51 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 1, Section 10, Township 27 North Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the north boundary line of section 10, distant 4732.0 feet from the northwest corner thereof, thence southeasterly along a direct line making a southeasterly included angle of 55 degrees and 30 minutes a distance of 274.6 feet thence [fol. 253] angle left 7 degrees 2 minutes 180.0 feet, thence angle right 18 degrees 14 minutes 98.0 feet, thence angle left 24 degrees 27 minutes 143.9 feet, thence angle left 12 degrees 55 minutes 96.0 feet, thence angle right 22 degrees 0 minutes 190.0 feet to a point in the east boundary line of section 10, thence north along said east boundary of section 10 a distance of 55.0 feet more or less to the northerly boundary of the shore lands, thence northwesterly along the said boundary of the shore lands lying in front of Government Lot 1, to an intersection with the north boundary of section 10, thence west along said boundary of section 10 a distance of 60.0 feet more or less to the point of beginning, containing an area of 0.92 acres more or less, situated in Chelan County, State of Washintgon.

All that part of Government Lot 4, Section 3, Township 27 North Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to or abutting upon that portion of the Government Meander Line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the south boundary line of Section 3, distant 4732.0 feet from the southeast corner thereof, thence northwesterly along a direct line making a northwesterly included angle of 55 degrees 30 minutes with said boundary a distance of 97.0 feet, thence angle right 5 degrees 36½ minutes 187.0 feet, thence angle right 2 degrees 6 minutes 87.7 feet, thence angle left 57 degrees 0 minutes 67.6 feet, thence angle right 33 degrees 51 minutes 171.2 feet thence angle right 0 degrees 33 minutes 72.0 feet, thence angle left 11

degrees 41 minutes 370.0 feet, to a point in the west boundary line of Lot 4, section 3 distance 653.0 feet from the southwest corner thereof, thence north along said boundary line of Lot 4 a distance of 50.0 feet, more or less to the northerly boundary of the shore lands, thence southeasterly along the said boundary of the shore lands lying in front of Government Lot 4, to an intersection with the south boundary of section 3, thence west along said boundary a distance of 60.0 feet, more or less, to the point of beginning, containing an area of .98 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government lots 1, 2, and 3, of Section 3, Township 27 North, Range 21 E. W. M., together with all shore lands of the second class, situated in front of, adjacent to or abutting upon that portion of the Government meander line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the west boundary of Section 3, distant 2198.0 feet, north from the southwest corner thereof, thence in a southeasterly direction along a direct line making a southeasterly included angle of 68 degrees and 51 minutes with said boundary a distance of 308.3 feet, thence angle left 13 degrees 17 minutes 103.2 feet, thence angle right 9 degrees 45 minutes 83.3 feet, thence angle right 35 degrees 18 minutes 121.7 feet, thence angle left 29 degrees 45 minutes 136.2 feet, thence angle left 8 degrees 15½ minutes 232.8 feet, thence angle right 17 degrees 53 minutes 185.5 feet, thence angle right 20 degrees 8 minutes 114.5 feet, thence angle left 18 degrees 42 minutes 116.8 feet, thence angle right 13 degrees 26½ minutes 87.3 feet, thence angle left 20 degrees 15½ minutes 192.0 feet, thence angle left 25 degrees 24½ minutes 311.2 feet, thence angle left 11 degrees 50 minutes 416.1 feet, thence angle right 3 degrees 43 minutes 61.4 feet, thence angle right 33 degrees 15 minutes 178 feet, thence angle right 1 degree 29 minutes 218.3 feet, thence angle right 1 degree 29 minutes 191.8 feet, thence angle right 6 degrees 42½ minutes 174.6 feet, thence angle right 29 degrees 20½ minutes 49.4 feet, thence angle [fol. 254] left 28 degrees 44 minutes 88.4 feet, thence angle left 16 degrees 149.3 feet, thence angle right 4 degrees 43½ minutes 53.2 feet; thence angle right 19 degrees 8 minutes 122.4 feet, thence angle left 9 degrees 29 minutes 95.4 feet,

thence angle left 6 degrees 10 minutes 133.0 feet, thence angle left 13 degrees 57 minutes 111.9 feet, thence angle right 19 degrees 24 minutes 91.5 feet, thence angle left 43 degrees 30 minutes 151.8 feet, thence angle right 22 degrees 51 minutes 114.8 feet, thence angle right 16 degrees 36½ minutes 89.3 feet, to a point in the east boundary line of Lot 3 Section 3, distant 653.0 feet from the southeast corner thereof thence north along said boundary a distance of 50.0 feet more or less to the northerly boundary of the shore lands, thence westerly along the northerly boundary of the shore lands lying in front of Government Lots 1, 2, and 3, to an intersection with the east boundary line (produced) of Section 4 Township 27 North Range 21 E. W. M., thence south along said boundary of Section 4 a distance of 117.1 feet more or less to the point of beginning; containing an area of 8.82 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 5 and 6, Section 14, Township 27 North Range 21 E. W. M., together with all shore lands of the second class situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the east boundary of Section 4, Township 27 North Range 21 E. W. M., distant 2198.0 feet north from the southeast corner thereof thence northwesterly along a direct line making a northwesterly included angle of 68 degrees and 51 minutes a distance of 3.3 feet, thence angle left 5 degrees 23 minutes 208.9 feet, thence angle right 20 degrees 44 minutes 83.3 feet, thence angle right 26 degrees 52 minutes 99.2 feet thence angle right 21 degrees 19 minutes 134.4 feet, thence angle right 9 degrees 36 minutes 231.2 feet, thence angle left 17 degrees 31 minutes 124.7 feet, thence angle right 25 degrees 43 minutes 108.2 feet, thence angle left 25 degrees 50 minutes 129.8 feet, thence angle right 11 degrees 8½ minutes 63.3 feet, thence angle left 11 degrees 50 minutes 69.0 feet, thence angle left 30 degrees 8 minutes 176.0 feet, thence angle left 8 degrees 3 minutes 77.0 feet, thence angle right 19 degrees 50 minutes 133.8 feet, thence angle right 24 degrees 21 minutes 114.9 feet, thence angle left 21. degrees 57 minutes 144.0 feet, thence angle left 5 degrees 51 minutes 96.0 feet, thence

angle right 18 degrees 37 minutes 50.1 feet to a point in the north boundary of Government Lot 5, Section 4, distant 550.2 feet from the northwest corner thereof, thence easterly along said boundary a distance of 355.0 feet more or less to the easterly boundary of the shore lands, thence southerly along the easterly boundary of the shore lands lying in front of Government Lots 5 and 6, to an intersection with the easterly boundary (produced) Section 4, Township 27 North Range 21 E. W. M., thence south along said boundary of Section 4 a distance of 117.1 feet more or less to the point of beginning, containing an area of 5.92 acres, more or less, situated in Chelan County, State of Washington.

Petitioner also seeks the right in perpetuity to damage the above described land, and all lands of the respondents lying contiguous or adjacent thereto, by wave wash, erosion, seepage, inundation, or any similar cause, as a result [fol. 255-264] of holding the waters of Lake Chelan and the Chelan River up to a maximum elevation of 1100 feet, still water measurement, above the sea level, and seeks to secure a release from all liability for all damages to the lands above described, and any and all lands of the respondents lying contiguous or adjacent thereto, in any manner arising from the impounding and storing of the waters of said Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1100 feet, still water measurement, above the sea level.

Dated this 25th day of April, 1927.

Post & Russell, Charles S. Albert, Edwin C. Mathias,
Attorneys for Petitioner.

*Duly sworn to by Edwin C. Matthias. Jurat omitted in printing.*

[fols. 265-269] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 20635

Nos. 7389, 7389, 7391, 7441, 7651, 7603, 7602

STATE OF WASHINGTON ON THE RELATION OF LEONARD J. Woodruff et ux., James P. Flick et ux. et al., Alice Barbee Wick et al., Schuyler J. Gray et al., Richard H. Lord et al., Schuyler J. Gray et ux., Edith Merritt et al., Relators,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND for the County of Chelan, the Honorable W. O. Parr, Judge Thereof, and Chelan Electric Company, a corporation, Respondents

MOTION FOR STAY OF PROCEEDINGS—Filed Jun. 14, 1927

Comes now the Relator, Alice Barbee Wick, appearing specially, and respectfully moves the Court for an order modifying the order issued herein on the 29th day of April, 1927, and the writ of certiorari issued on said date in pursuance of said order, and to grant a stay of proceedings and of the trial upon the question of damages in the Superior Court of Chelan County herein until after the decision of this court upon said writ of certiorari.

This motion is based upon the records and files herein and the affidavit of J. L. Baldwin hereto attached.

Adrien W. Vollmer, A. N. Corbin, Paul P. Ashley, J. L. Baldwin, Attorneys for Relator Alice Barbee Wick, 530 Burke Building, Seattle, Washington.

[fol. 270] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 20635

[Title omitted]

AFFIDAVIT OF EDWIN C. MATTHIAS IN RESISTANCE TO MOTION FOR STAY OF PROCEEDINGS—Filed June 17, 1927

STATE OF WASHINGTON,
County of King, ss:

Edwin C. Matthias, being first duly sworn, on oath deposes and says: that he is one of the attorneys for the respondents and makes this affidavit for and on their behalf in resistance to the motion for stay of proceedings herein. That he has read the affidavit of J. L. Baldwin in support of said motion, and denies each and every part thereof, save and except as hereinafter admitted.

On April 29th, 1927, this matter came on for hearing before this court upon the application of the relators for a writ of certiorari herein. The court's calendar on that day was exceedingly long and it looked like the court would not be able to hear the matter. For that reason the Chief Justice requested the attorneys for all of the parties to meet him in his office shortly after one o'clock to discuss what should be done if the cases should not be reached, respondents having impressed upon the Chief Justice the importance of disposing of the question upon that day. Shortly after one o'clock the respective attorneys met with the Chief Justice in his office, the relators being represented by Messrs O. P. Barrows and William A. Grimshaw of Wenatchee, and Adrien W. Vollmer, of Philadel-
[fol. 271] phia, and the respondents by Frank T. Post and affiant. The matter was discussed with the Chief Justice at some length and it was agreed that the respondents would not insist upon arguing the question of the relator's rights to have a writ of certiorari granted and that the writ should issue without a hearing and "that said writ shall not require any stay of proceedings in the Superior Court in any of the causes referred to in said petition for

writ of certiorari", all of said attorneys representing said relators being present and agreeing to said arrangement. Thereupon all of said attorneys prepared the order and writ of certiorari and presented the order to the Chief Justice for signature and the writ of certiorari to the Clerk of the court, and the said order and the said writ were thereupon signed by the Chief Justice. After the order had been signed by the Chief Justice the said Adrien W. Vollmer asked affiant to agree that it might be inserted in the said order granting the said writ that he had merely made a special appearance for the relator Wick, and affiant consented to said correction in long hand, provided it was agreeable to the Chief Justice. The matter was referred to the Chief Justice by the Deputy Clerk and thereupon the correction was made in accordance with the request of the said Vollner.

Setting day in Superior Court of Chelan County was the next day, April 30th, and all of said cases had been noted for setting for trial upon that date, and upon the following day affiant was present in the Superior Court of Chelan County, as were also all of the said attorneys representing the relators. When Judge Parr commenced to set the cases for trial affiant was approached by the said Adrien W. Vollmer, who requested affiant to agree that his case could be tried in the month of June, rather than the month of May. Affiant understanding that the said Adrien W. Vollmer was concerned with the shortness of the time within which to prepare his brief for this court, the case having been set for argument on the second day of June and the court having fixed May 16th as the date upon which his brief must be served, affiant consented that the Wick case could be [fol. 272] set for trial in June upon certain conditions, to which conditions the said Adrien W. Vollmer agreed, but in the written agreement inserted this paragraph:

"This communication is not to be used by you in any way in connection with any litigation in which the said Alice Barbee Wick is a party or at all, and its only force and effect shall be as above stated."

For said reason affiant does not quote from said agreement, although affiant believes the said Adrien W. Vollmer has

violated the spirit of that agreement by stating in his affidavit that he has agreed that the lake may be raised to the elevation of 1085 feet.

All of the cases mentioned in the title herein were tried in the Superior Court of Chelan County on the question of damages during the month of May, except the Wick and Merritt cases, and both of said cases are now set for trial during the month of June, the Wick case for trial on June 22nd. The said cases were set on the regular setting day on May 28th. The motion for stay of proceedings herein was served upon affiant about 5:30 P. M. on the evening of June 13th, so that the statement in the affidavit of said J. L. Baldwin "that an emergency exists and it is not possible to give the usual ten days' notice of this motion" (as required by Rule 19 of this court), "but affiant hastens to serve this affidavit and the motion and notice at the earliest possible date, upon the attorneys for respondents," is not in accordance with the facts.

Judge Parr tried Chelan Electric Company cases during practically all of the month of May, and has set said cases for trial continuously during the month of June, beginning with the 14th instant and has a jury in attendance for said purpose, no other jury cases being set for trial during said month. The trial of these cases involves a large amount of expert testimony, including experts on the question of erosion of the soil due to wave wash, the expense of constructing docks to meet the new conditions upon the lake, the value of the land affected by the enterprise of the petitioner and respondent many and varied other questions which [fol. 273] necessity the attendance of a large number of expert witnesses. All of said witnesses are now present in Wenatchee and have been present during most of the month of May, and the Wick case can be tried more conveniently, more economically and more expeditiously at this time than it can be if continued to a later date. Affiant is informed and believes that the relator Wick, through her nephew and attorney, Adrien W. Vollmer of Philadelphia, has had large corps of attorneys, engineers, surveyors and expert witnesses of all kinds in the field for some time, examining her property and preparing her case for trial.

Edwin C. Natthias.

Subscribed and sworn to before me this 15th day of June, 1927. H. F. Johnson, Notary Public in and for he State of Washington, Residing at Seattle. (Seal.)

Service of the within affidavit, by receipt of a true copy thereof, is hereby admitted this 16th day of June, 1927.

J. L. Baldwin, Attorney for Relator Alice Barbee Wick.

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[fol. 274] IN SUPREME COURT OF WASHINGTON

No. 20635

[Title omitted]

ORDER DENYING MOTION FOR STAY OF PROCEEDINGS—June 23, 1927

Ordered that the motion to stay proceedings herein be, and the same is, denied.

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[fol. 275] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

vs.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION—Filed June 27, 1927

Your petitioner, Alice Barbee Wick, one of the respondents above named, and appearing specially for the purpose only of the removal of the above-entitled cause, respectfully shows to this Honorable Court that she is one of the respondents in this suit, which is of a civil nature, and that

the matter now in dispute in this cause exceeds the sum or value of $3,000.00 exclusive of interest and costs.

Your petitioner shows to this Honorable Court that there is in said suit a separable controversy which is wholly between citizens of different states and which can be fully determined as between them, to-wit: a separable controversy between your said petitioner herein, who avers that she was at the time of the bringing of this suit and ever since has been and still is a citizen and resident of the State of Pennsylvania, and not a resident of the State of Washington, and that the said Chelan Electric Company, a corporation organized and existing under the laws of the State of Washington, petitioner in the above entitled proceeding or suit, who as your petitioner herein avers was then and ever since has been and still is a citizen of the State of Washington.

That the said controversy is of the following nature, viz: A proceeding by petition, for the purpose as alleged therein, [fol. 276] "to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by the petitioner to the owner or owners, respectively, and to all tenants, encumbrancers, and others interested for the taking or injuriously affecting the lands, real estate and other premises", in said petition described and hereinafter described, "for a release from all liability for all damages to the lands in any manner arising from the impounding or storing of the waters of Lake Chelan and the Chelan River, and raising the same to the maximum elevation of eleven hundred feet above mean sea level", by building a dam and doing other work necessary for the conversion of said Lake or River into a storage reservoir for the said impounding of said water.

The lands, real estate and other premises proposed to be taken or injuriously effected are situate in Chelan County, State of Washington, and are particularly described in said petition as follows:

Government Lots One (1), two (2), three (3), and four (4), and the Southwest quarter of the Southwest quarter of Section three (3); Lots five (5) and six (6), Section four (4); Lot One (1), Section ten (10); Lot Forty-two (42), Section Eleven (11), and Lot Forty-three (43) all

in Township Twenty-seven (27) North Range Twenty-one (21) E. W. M., together with all shore lands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property, and all littoral and riparian rights thereunto belonging or appertaining.

That it is further claimed in the said petition of the said petitioner, Chelan Electric Company, (and is a part of said controversy) that said appropriation is sought subject to an alleged right on its part to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of said Lot One (1), Section ten (10), and said Lot four (4), Section three [fol. 277] (3), Township Twenty-seven (27) North Range twenty-one (21) E. W. M., and to overflow and inundate the same to the high water mark of Lake Chelan, alleged to have been granted by the order of the State Board of Land Commissioners, dated December 6th, 1909, (application No. 7077) under and by virtue of Chapter 125, Session Laws of 1907.

That the further purpose of said petition as alleged therein is to have the "contemplated use for which the above-described land, real estate and premises are sought to be applied" adjudged and decreed by said Superior Court as a public object and use, and claiming that the public interest requires the prosecution of said enterprise.

That the other respondent in said cause is the said Chelan County, Washington, a municipal corporation and a citizen of the State of Washington; that said Chelan County is not a tenant, lienor, or encumbrancer, and has no right, title interest or estate whatsoever in any of the land, real estate or other premises owned by said Alice Barbee Wick; that there are no taxes or other amounts due and owing by said Alice Barbee Wick to said Chelan County, and that the controversy between said Chelan Electric Company and said Alice Barbee Wick is a separable and distinct controversy between said Chelan Electric Company and said Alice Barbee Wick, your petitioner herein, who are citizens and residents of different states, as aforesaid, which can be wholly determined between said

Chelan Electric Company and said Alice Barbee Wick without the presence in this action of said other respondent, viz: said Chelan County, Washington, a municipal corpora-
[fol. 278] tion. That your petitioner desires to remove said cause to the United States District Court for the Eastern District of Washington, Northern Division, and your petitioner makes and files herewith a bond in the sum of Five Hundred Dollars ($500.00), with good and sufficient surety for her entering said District Court of the United States for the Eastern District of Washington, Northern Division within thirty (30) days from the date of the filing of this petition a certified copy of the record in said cause, and for paying all costs that may be awarded by said District Court if it shall hold that said suit was wrongfully or improperly removed thereto.

Wherefore your petitioner prays that the Honorable Court proceed no further herein except to accept this petition and said bond, as required by law, and to order said cause removed to said District Court of the United States for the Eastern District of Washington, Northern Division, and to order a transcript of the record herein be prepared and certified for transmission to said District Court as provided by law, and to stay all further proceedings herein.

Adrien W. Vollmer, A. N. Corbin, John B. Shorett, J. L. Baldwin, Attorneys for said Petitioner Herein, appearing specially, as aforesaid.

Office and Post Office Address: Widby-Hadley Building, Wenatchee, Chelan County, Washington.

[fol. 279] *Duly sworn to by Adrien W. Vollmer. Jurat omitted in printing.*

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[fol. 280] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

BOND ON REMOVAL—Filed June 27, 1927

Know all men by these presents: That we, Alice Barbee Wick, the respondent above, as Principal, and the Globe Indemnity Company, a corporation organized and existing

under and by virtue of the laws of the state of New Jersey, and duly authorized to do business in the State of Washington, as Surety, are held and firmly bound unto the Chelan Electric Company, the petitioner in the above entitled cause, its successors and assigns, in the penal sum of five hundred and no/100 ($500.00) dollars, lawful money of the United States of America for the payment of which sum, well and truly to be made, the said Principal hereby binds herself, her heirs, administrators, executors, and the said Surety Company hereby binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Upon condition, nevertheless, That whereas the said respondent, Alice Barbee Wick simultaneously with the filing of this bond intends to file her petition in the above entitled suit or proceedings in the above entitled court for the removal of such suit or proceedings into the District Court of the United States in the District where such suit or its proceeding is pending, to-wit: The District Court of the United States in and for the Eastern District of Washington, Northern Division, according to the provisions of the Act of Congress in such case made and provided;

Now, if the said Alice Barbee Wick shall within thirty (30) days from the date of filing of said petition for removal enter into the said District Court of the United States in and for the Eastern District of Washington, Northern Division, a certified copy of the record in said suit or proceeding, and shall well and truly pay or cause to be paid, all costs that may be awarded by said District Court of the United States in and for the Eastern District of Washington, Northern Division, if said court shall hold that said suit or proceeding was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, it shall remain in full force and virtue.

Witness our hands and seals this 27th day of June, 1927.

Alice Barbee Wick, by Adrien W. Vollmer, Her Attorney in Fact. (Seal.) Globe Indemnity Company, by Fred M. Crollard, Attorney in Fact. E. Roy Van Leuven. (Seal.)

The foregoing bond is hereby approved and accepted this — day of ——, 1927.

—— ——, Judge.

[fol. 281] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

PROPOSED ORDER OF REMOVAL—Filed June 27, 1927

This cause having come on for hearing and trial in the above named court and the petitioner appearing by its attorneys, Charles S. Albert, and A. J. Clynch and respondent, Alice Barbee Wick, appearing specially by her attorneys, Adrien W. Vollmer, A. N. Corbin, John B. Sherett, and J. L. Baldwin, and petitioner having called witnesses to prove the amount of damages to be awarded to said respondent Wick for the taking and damaging of her property herein and having introduced other evidence and having rested, and said respondent Wick having thereupon presented her petition with special appearance and her bond duly executed in the sum of Five Hundred ($500.00) Dollars, together with an accompanying affidavit petitioning the Court to remove the said cause to the District Court of the United States for the Eastern District of Washington, Northern Division, on the ground that there was no evidence introduced or offered in behalf of said petitioner showing any interest of said Chelan County, in the controversy or proceedings herein or in the property described and on the further ground that whatever controversy there was, if any, was between said Chelan Electric Company and said Chelan County on the one side and said respondent Wick on the other, and that it first conclusively appeared by the close of petitioner's case that said Chelan County had no such interest and was not a necessary or proper party hereto with said respondent Wick; and the matter having been argued by counsel on both sides and the court having fully considered the same and being fully advised in the premises denied said petition and application for removal on the ground that all matters and things now shown to the court as a reason for said removal have been hereto-
[fol. 282] fore shown or might have been shown by said respondent Wick in the hearing upon her former petition for removal heretofore had herein and that no new ground exists or is shown in the present petition, wherefore

It is hereby ordered and adjudged that said petition and application be and the same hereby are denied.

To which ruling and order said respondent Wick excepts and her exception is hereby allowed and noted.

Done in open court this — day of June, 1927.

—— ——, Judge.

The above form of order was drawn at the suggestion of the court by the attorneys for respondent, Alice Barbee Wick, and submitted to counsel for petitioner and to the court at the close of the court session on June 27, 1927, and objected to by petitioner. The Court postponed the matter until 9:30 A. M of June 28, 1927, when the respondent again presented above form, which the court refused to sign, and respondent Wick excepted to said refusal, which exception was allowed and noted; and petitioner presented its proposed form of order which the court signed and to said order and the whole thereof respondent Wick excepted and her exception was and is allowed and entered.

Done in open court this — day of June, 1927.

—— ——, Judge.

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[fol. 283] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

ORDER DENYING PETITION FOR REMOVAL—Filed June 28, 1927

This cause came duly on for trial in the above entitled court, on the 23rd day of June, 1927, and said was duly called for trial. Said petitioner by and through its attorneys, announced that it was ready for trial, and said respondent Alice Barbee Wick, by and through her attorneys, Adrien W. Vollmer, A. N. Corbin, John B. Shorrett and L. J. Baldwin, announced that she was ready for trial. Said Chelan County, Washington, a municipal corporation had heretofore appeared in said action by its attorney J. A. Adams. Trial of said action was begun upon said 23rd day of June, 1927, without objection on the part of any of said respondents, or without special appearance having

been made on said date by any or either of the same. A jury was duly impaneled, witnesses were duly called on behalf of said petitioner and cross examined by said respondent Alice Barbee Wick, through her said attorneys. Evidence was introduced, including Exhibits 18 and 19, which were made and are a part of the records and files in this action, and which related to the steps taken toward the vacation of the present county road across the property involved in this proceeding, and the re-establishment of a new county road across said property, and relating to the suit brought by the petitioner herein against Chelan County, Washington, in this court, and the judgment and decree entered therein, all of which more fully appears from said Exhibits on file herein and made a part of the records in this case. Said evidence further showed that the county road referred to in said exhibits 18 and 19 lies within the area included within the boundaries set forth in the Bill of Particulars herein, and sought to be condemned by the [fol. 284] petitioner, and that said road is included in the 31.25 acres shown on Petitioner's Exhibit 2 in this proceeding as land to be affected by the flowage up to the 1,100 foot elevation, still water measurement, above mean sea level, which flowage right is the subject of this proceedings, and that the new county road to be constructed after the judgment and decree of appropriation in this action, is laid out in the immediate vicinity of the present county road, above said 1,100 foot elevation, and over and across lands, the market value of which it is claimed will be depreciated by reason of the flowage of the lands of the respondent, Alice Barbee Wick, up to said 1,100 foot elevation. The petitioner having rested about the hour of 11:30 A. M., said respondent Alice Barbee Wick, served upon petitioner a petition for removal in which petition it was stated that the said Alice Barbee Wick appeared specially for the purpose only of such removal and petitioned the court to remove said cause to the District Court of the United States in and for the Eastern District of Washington, Northern Division, serving therewith the affidavit of Adrien W. Vollmer, and a bond on removal, which said petition, affidavit and bond were immediately handed to the Clerk, marked filed and presented to said court in the courtroom in which the said case was being tried, within two minutes after

being served upon petitioner, and said petition, affidavit and bond were presented without any other notice, written or otherwise, being given to either the said petitioner or said Chelan County, Washington, a municipal corporation, respondent.

Thereupon the court, having heard the argument of counsel for the petitioner objecting to the removal of this cause, and argument of counsel for respondent Wick, at and about the hour of twelve o'clock noon on the 27th day of June, 1927, made an oral ruling denying the petition for removal. Thereafter court adjourned for noon recess and immediately after reconvening court at the hour of 1:30 o'clock in the afternoon, the said respondent, Chelan County, Washington, a municipal corporation, appeared by and through its attorney J. A. Adams, prosecuting attorney for said county, and filed a separate and written objection to the granting of any petition for removal made by [fol. 285] the respondent Wick, which objection is made a part of the files and records in this proceeding. The said petitioner moved to reopen its case and introduce evidence with reference to taxes relating to the property involved in this proceeding, which motion was duly granted and said case reopened, and evidence was introduced herein, which evidence showed, among other things, that on the 12th day of March, 1927, the said respondent, Alice Barbee Wick, by and through Adrien W. Vollmer, her agent and attorney, paid the taxes due for the year 1926 on the property involved in this proceeding, which said taxes had not been paid at the time of the institution of this proceeding and which were then due and unpaid, and which constituted a lien on the property of said Alice Barbee Wick, respondent, and that the said Alice Barbee Wick, by and through her agent and representative, Adrien W. Vollmer one of the attorneys representing her in this case, had then and has ever since said 12th day of March, 1927, had full knowledge and information of the fact that said taxes had been paid for the year 1926, and were no longer a lien upon the property of said Alice Barbee Wick, involved in this proceeding, and that if this cause were removable to the United States District Court it was removable on the 12th day of March, 1927. Said evidence further showed that said property had been duly assessed for the said taxes in 1926 and that

the assessed valuation of said property for 1926 still stands as the assessed valuation of said property for the year 1927.

Now, therefore, it appearing to the court that this is not a separable controversy; that there has been no false or fraudulent joinder of parties hereto; that said petition bond and affidavit on removal have been presented to the court without notice to either said petitioner, Chelan Electric Company, or said respondent, Chelan County, Washington, a municipal corporation; that the said Alice Barbee Wick has had full knowledge and notice of the fact that the said taxes for 1926 have been paid ever since the 12th day of March, 1927; that this cause proceeded to trial without objection on the part of the respondent Wick; that said Chelan County, is a necessary and indispensable party to [fol. 286] these proceedings, that this cause has heretofore been attempted to be removed by the said Alice Barbee Wick to the said United States District Court in and for the Eastern District of Washington, Northern Division, and was on the 3rd day of November, 1926, duly remanded by said United States Court to this court; that neither at the time of the said removal nor at this time was the removal petition noticed, filed or heard within the time limited by law, and that there has been no change in the status of the parties hereto, requiring the granting of the petition for the removal herein.

It is ordered that said petition for removal be and the same is hereby denied. To which respondent Wick excepts which exception is allowed.

Done in open court this 28th day of June, 1927.

W. O. Parr, Judge.

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[fol. 287] In Superior Court of Chelan County

[Title omitted]

Respondent's Requested Instructions to Jury—Filed June 30, 1927

Comes now the respondent, Alice Barbee Wick and still preserving her special appearance and objecting to the

jurisdiction of the court both on the ground of defective service of process or notice and on the further ground of loss of jurisdiction by reason of the respondent's petition for removal to the District Court of the United States, requests the court to give the following and each of the following instructions to the jury.

[File endorsement omitted.]

[fol. 288] Instruction No. 1

This is a proceeding instituted under authority of law by which petitioner is enabled to take and appropirate the property of respondent against her will and under such circumstances she is entitled to just and full compensation for all damages by reason of such taking and appropriation, including the full market value of the land and property so taken and appropriated, and all damages which you may find resulting to the portion of her property in the same tract not taken.

Instruction N. 2

You are further instructed that in a proceeding such as this now before you the Petitioner has the burden of proof, and must sustain such burden by a fair preponderance of the evidence.

Instruction No. 3

The market value of property is not determined by the present use or lack of use which may be made of it by the owner; property is not to be deemed worthless because the owner neglects it or allows it to go to waste or is unable or unwilling to put it to any use. Others may be able to use it and make it subserve the necessities and conveniences of life or business. Its value in such a proceeding as this is to be determined with reference to the highest or most valuable use to which it is reasonably adapted.

[fol. 289] Instruction No. 3a

In arriving at the market value are to consider any and every use to which the property is reasonably adapted or

suitable and to fix the highest value which it has for any such use, considering whatever present demand there may be for such use or whatever value it now has in view of the present prospects for demand for such use in the near future.

Instruction No. 4

In fixing the amount of depreciation of the remainder, if you find that the part of the land not taken has a value dependent on the present level and condition of Lake Chelan with reference to the location and construction of docks, bathing boards and like structures and that by reason of the said taking and the maintenance and operation of the proposed project it will cost more to construct, operate and maintain suitable docks, bathing boards and like structures for which said land not taken may reasonably be adapted after said taking, the probable extra cost of construction, operation and maintenance is to be considered by you in fixing the amount of damages to the remainder is to be allowed the respondent, Alice Barbee Wick.

[fol. 290] Instruction No. 5

If you further find that the part of the tract not taken has a value which is partly dependent on the present location and condition of Lake Chelan with reference to pumping water from said Lake for use on said land for any purpose and that by reason of said taking and appropriation and operation and maintenance of the proposed project it will cost more to install, operate and maintain suitable pumps, pipes and so forth, than it would cost under present conditions, you are to consider the extra cost of installing, operating and maintaining such suitable pumps, pipe and so forth, in fixing the amount of damages to the remainder which are to be allowed to said respondent, Alice Barbee Wick.

Instruction No. 6

If you find that the remainder of the tract not taken has a value enhanced by reason of its location with reference

to the present level of the waters of Lake Chelan and the present facilities and cost of constructing, operating and maintaining pumps, docks, bathing boards and other like structures and that by reason of the appropriation and taking of said respondent's property and the operation and maintenance of the proposed project of the petitioner, Chelan Electric Company, it will cost more to install, operate and maintain such structures in the future, you are to consider the extra cost of such construction, operation and maintenance without regard to whether or not there are any such structures at present installed.

[fol. 291] Instruction No. 7

If you find that the remainder of the tract not taken has a value dependent on the present location of the water of Lake Chelan and which will be affected by the taking and appropriation of a part of the tract or by the maintenance and operation of the proposed project, you will fix and allow the full amount of depreciation in value of said remainder, if any, which will be caused thereby.

Instruction No. 9

You are further instructed that under the notice and petition in this proceeding the petitioner is seeking to raise the elevation of the waters of Lake Chelan and inundate the lands of the respondents described elsewhere in these instructions to a maximum elevation of 1,100 feet above mean sea level, still water measurement, and that as between the petitioner and the respondents the petitioner is not required to maintain the said water at any particular level any given time nor to raise said water to any particular level at any given time.

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[fol. 292] [File endorsement omitted]

In Superior Court of Chelan County

Instructions to Jury—Filed June 30, 1927

Instruction No. 1

The evidence in this case being now closed, it is the duty of the court to charge you as to the law in the case, and at

the close of the argument of counsel for the petitioner and respondents it is your duty to deliberate upon the evidence and the law as laid down in the Court's instructions and to render your verdict thereon.

In order that you may have such aid as the Court may give you in understanding the case, the Court will briefly inform you as to the duties and functions of the various persons who take part in the trial.

Instruction No. 2

The attorneys represent the Petitioner and the Respondents, respectively and it is their duty to present the evidence and arguments in a proper manner. You may have observed, from time to time that the attorneys objected to questions asked of witnesses and to offers of evidence and have argued such objections to the court. This it was both their privilege and duty to do. In such arguments, however, they may have said things which to you appear to have the force of evidence; hence the court cautions you not to consider in the slightest any such arguments or statements made in arguments or on objections as evidence in considering your verdict. Arguments on objections during the trial of the case and all arguments made from time to time, except the final argument to you, are addressed to the Court, and are intended for the Court alone. Neither should you regard as evidence the opening statements of attorneys. By such opening statements the attorneys merely forecast what they expect to show by evidence to be received in the course of the trial. You should not regard the arguments made to you upon the evidence as evidence in the case. The sole purpose of final argument to the jury [fol. 293] is to assist the jury to a better understanding of the evidence that has been received and the application of the law thereto as contained in the Court's instructions. You should listen carefully to such arguments in order to get such help as you may therefrom in understanding the evidence and the law.

The duty of the judge is to see that the trial is conducted properly; to rule upon all questions of law which shall arise, and to instruct the jury upon the law of the case as the court is about to do in this case.

It is your duty, Members of the Jury, to be guided in your deliberations and to receive as the law the instructions which the Court gives you. Right or wrong, you must accept as the law of the case, the law as given in these instructions. If the Court errs in declaring the law, the law has provided a remedy by which such error can be corrected; that remedy is not in your province to administer.

You are not to be guided by what the Court may think the evidence to be or what you may believe the Court thinks the evidence establishes, but you must look to the evidence in the case and determine for yourselves what you may believe the evidence established.

In ruling upon objections from time to time in the course of the trial the Court may have said some things which would appear to you to indicate that the Court believed certain facts to be established. Statements of this kind, if any, made by the Court, are intended solely as the reasons for the admission of evidence along proper legal lines and not as a statement that any fact has been proven by evidence. The Court thereby means that, in the Court's judgment, certain testimony or evidence has been received, which if believed by the jury, would tend to establish certain contentions and render proper the admission of other evidence in support thereof or in contradiction thereof.

[fol. 294] The court is expressly prohibited from commenting upon the facts in any case, and if such comment has occurred, you are instructed that you must utterly disregard such comment and rely solely upon your own judgment as to what facts should be found from the evidence adduced.

It is your duty to decide all questions of fact.

Instruction No. 3

Should any appeal be made to your feelings or passions, it is your duty to disregard such appeal entirely, for your verdict must be based on the evidence and the instructions of the Court and on these alone.

You must carefully exclude any and all feelings of prejudice, bias, passion, interest and all things other than the evidence given in the trial of the case, and find your verdict from and base it upon the evidence alon*g* as received in this trial.

Instruction No. 4

The instructions given to the jury are and constitute one connected body and series and should be so regarded and treated by the jury; that is to say, you should apply them as a whole to the facts; that is, consider all of the instructions together as they may relate to the facts as shown by the evidence.

Instruction No. 5

The Chelan Electric Company, the petition-,is a public service corporation of the state of Washington, and as such has the right in these proceedings to take and appropriate the property of the respondents for the purpose of storing and impounding water in Lake Chelan in order to develop and utilize the water power afforded by Lake Chelan and the Chelan River. It has permits from the State Supervisor of Hydraulics of Washington, permitting it to appropriate water from Lake Chelan and Chelan River, to construct a reservoir and to store waters therein, and a permit from the Federal Power Commission of the United States for the construction, operation and maintenance of dams, reservoirs and other projects works necessary for the development and utilization of the water power afforded by the waters of Lake Chelan and the Chelan River. It is necessary for the Chelan Electric Company to construct, maintain and operate a dam and reservoir for the storage of the waters of Lake Chelan to a maximum elevation of 1100 feet, still water measurement, above mean sea level, to impound such waters and to inundate and overflow the land described in the bill of particulars in this action.

[fol. 295] Instruction No. 6

The object of this proceeding is to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by the petitioners, to the defendants, for the taking or injuriously affecting the premises described in the bill of particulars, and for a release from all liability for all damages to such premises in any manner arising from the impounding and storing of the waters of Lake Chelan and the Chelan River

to the elevation of 1100 feet, still water measurement, referred to. The Chelan Electric Company has already acquired, through purchase, the major portion of the property necessary for this power development. The use to which this power is to be put is a public use and the object for which the premises of the defendants are sought to be appropriated is a public object and use, and the public interest requires the prosecution of the enterprise of the Chelan Electric Company.

[fol. 296] Instruction No. 7

In this case the petitioner is seeking to acquire the right to inundate and overflow to an elevation of 1100 feet above mean sea level, still water measurement, the strip of land described in the bill of particulars, and also shown upon the map, which is in evidence, marked Petitioner's Exhibit 2, and damage the adjacent and contiguous property, the said overflow to be caused by a dam which the petitioner is constructing on the Chelan River a number of miles below the property in question. The petitioner is not seeking to acquire the fee simple title. When a person acquires a fee simple title to a tract of land he has ordinarily, under the law, the right to keep all persons off from that land. The petitioner, however, is seeking only an easement in said land; that is, the petitioner is seeking the perpetual right to overflow and inundate said lands to the elevation of 1100 feet above mean sea level, and the owner of the land, the respondents in this case, will retain all rights and privileges incident to the ownership of the real property not inconsistent with the right of the petitioner as above mentioned to inundate and overflow the said strip of land to an elevation of 1100 feet above mean seal level, still water measurement.

[fol. 297] Instruction No. 8

You are instructed that the evidence introduced herein by the petitioner shows that the County Road heretofore existing over a part of the property described in Petitioner's Exhibit 2 and the Bill of Particulars herein has been vacated by the County Commissioners of Chelan County and condemned by the petitioner herein in a sepa-

rate proceeding against the county and by a decree of this Court, and that upon vacation of a County Road running through the land of one owner, the title to the right of way so vacated reverts to the said owner and said owner is entitled to the full compensation to be allowed for the taking appropriating and damaging of the said land comprising said former right of way.

[fol. 298] Instruction No. 9

Even if you shall find that the water of Lake Chelan at the elevation of 1100 feet will interfere with, or take away the present access by road to Respondents' tract of land, nevertheless, if you shall further find that access to the tract will be supplied by a similar road before the present road is interfered with, which new road will be above the 1100 foot mark and will be as reasonably sufficient for the needs of respondent Wick as the present road, you will allow nominal damages only for the change in road. The respondent will be compensated either by agreement or in another proceeding, for the taking of the land for the new road and no allowance shall be made by you in this proceeding therefor.

[fol. 299] Instruction No. 10

You are further instructed that in considering the market value of the lands of Respondents you may not consider the making of any new road to be placed upon or taken from the respondent Wick's lands in the future nor may you consider any benefits or any damage by reason of such proposed new road. The taking of property for public highways and the awarding of damages therefor and the consideration of benefits or lack of benefits therein, is a matter for trial in an appropriate action for such purpose.

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[fol. 300] Instruction No. 11

You are instructed that in this proceeding the only issue for you to determine is the amount of compensation which shall be paid by the Petitioner to the Repondents for the

property of said Respondents which is sought to be taken for flowage rights and for the depreciation, if any, in value of the remainder of said property by reason of such flowage.

Instruction No. 12

You are further instructed that under the constitution of this state as it applies to the issues before you:

Article I, Section 16, "No private property shall be taken or damaged for public use without full compensation having first been made or paid into court for the owner, irrespective of any benefit from any improvement proposed, which compensation shall be ascertained by a jury".

Instruction No. 13

You are further instructed that the right to take such property has been heretofore adjudged by the Court and that question is not a matter for consideration by you herein.

Instruction No. 14

You are further instructed that in arriving at the damages to be paid Respondents in this proceeding you may not take into consideration any benefits or presumed benefits by reason of Petitioner's proposed use of such property and that in any award which you shall make the Respondents are entitled to the fair cash market value of their property as taken or damaged by Petitioner, such value being determined as of the time of this trial, regardless of the causes which gave such real estate its value.

Instruction No. 15

You are further instructed that in a proceeding such as this now before you the Petitioner has the burden of proof, and must sustain such burden by a preponderance of the evidence.

[fol. 301] Instruction No. 16

The respondents are entitled to just compensation for the appropriation and use by the Petitioner of respondent's

land, real estate, premises or other property, and you shall ascertain, determine and award the amount of damages to be paid to the owner thereof for the taking of the easement which the petitioner seeks to take to inundate and overflow the land described in the bill of particulars to the maximum elevation of 1100 feet, still water measurement, together with the right to damage the respondents' land by wave wash, erosion, seepage, inundation or any similar cause, as the result of holding the waters of Lake Chelan up to the maximum elevation of 1100 feet, still water measurement; and, second, the amount of damage which you shall find the respondents are entitled to recover by reason of the decrease in market value, if any, to the balance of Respondents' tract occasioned by the taking of the easement just referred to.

[fol. 302] Instruction No. 17

Just compensation means equitable compensation; that the owners shall be saved harmless as near as may be, and shall recover the damage which the respondents have actually sustained.

It does not mean that the owners shall be allowed to acquire and appropriate any more money from the petitioner than that which is necessary for fair and adequate compensation for respondent's loss or injury. It is the equivalent for the value of the easement taken and the depreciation, if any, in the market value of the balance of the tract. Anything beyond that is more than compensation. Anything short of it is less. This equivalent is for the present value, that is, at the time of taking, and not for the future value. It is not intended that compensation shall extend to loss or injury which the land owner does not have at the time of taking.

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[fol. 303] Instruction No. 18

In ascertaining the value of property as taken in this case, the jury are instructed that they are to determine its fair market value as of the time of this trial.

By "the market value of property" is not meant what could be obtained for it at forced sale, or at a sudden demand for the sale thereof, but the market value referred to is when the man owning the property is willing, but not obliged, to sell it, and the party to whom it is offered is willing, or desires to purchase the same but is not obliged to do so.

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[fol. 304] Instruction No. 19

The market value of the land is to be estimated with reference to the uses and purposes for which it is adapted and any special features which may enhance its marketability may properly be considered. The fact, however, that the land is needed by the Chelan Electric Company upon which to store water is not to be regarded as an element of the value to be ascertained. The question of market value is not what the property is worth to the Chelan Electric Company, nor the purpose for which the water is to be used, but what could probably be realized from its sale to any purchaser who might desire it for any or all of the purposes for which it is available.

[fol. 305] Instruction No. 20

In determining whether the respondents' property has a market value for any special use, it must appear that such property is available and adaptable for such use. To be available, however, does not refer to a future possibility, but to a present capacity for a use which may be anticipated with reasonable certainty and made the basis of an intelligent estimate of value. In fixing the market value for uses to which it has never been applied, its availability for future uses must be such as enter into and effect its market value, and regard must be had to the existing wants of the community or such as may be reasonably expected in the immediate future. The location of the property, its surroundings, and all other things tending to show its market value are to be considered but nothing should be allowed for imaginary or speculative damages or such remote or inappreciable damages as may be conjured up by the immigration and which may or may not occur in all the future.

[fol. 306] Instruction No. 21

In fixing the market value of the property involved, the jury is not permitted to enter the realm of speculation or to enlarge damages beyond present cash value under fair conditions. It is not what the property may be worth at some distant day in the future, but what it is worth now, taking into consideratioon everything properly entering into its present value, including its availability for the special purposes for which it is claimed it may be used, within such time as gives additional value to it when sought to be condemned.

[fol. 307] Instruction No. 22

You are not to consider any value which might be suggested for the land in exception(al) *of* unusual instances, or under peculiar conditions or circumstances not shown to exist, and which do not tend to show the fair cash market value of the land. You will not, therefore, take into consideration any peculiar value which the land might have to the owner apart from what would be paid by the general public, nor will you consider the owner's unwillingness, if any appears, to sell the land. Further, the damages and the value of the property taken cannot be measured by the value of the property to the party condemning it; that is, the petitioner in this case, nor can it be measured by the petitioner's need for the particular property. In arriving at the estimate of the damages in this case the jury will not take into consideration anything as an element of damages which is remote or uncertain, indefinite or speculative, but the only element which you will take into consideration as tending to reduce the market value of the land not taken are those elements which are appreciable, substantial and which will actually lessen the value of the land not so taken.

[fol. 308] Instruction No. 23

You are further instructed that in determining the value of land appropriated for general public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must

be, what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say what is it worth from its availability for valuable uses. Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. The compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future.

In estimating the value of the real estate you may consider all of its capabilities and all of the uses to which it is applied, and for which it is adapted, but you shall not consider the fact, if you find such fact to be, of the unwillingness of the owner to sell or dispose of said property.

[fol. 309] Instruction No. 24

You are not to consider what the property sought to be condemned is worth to the owners for speculation, or merely possible uses, what the respondents claim it is worth to the respondents, what the property would bring at a forced sale, or what the property would sell for under special or extraordinary circumstances.

The market value of the land sought to be taken should be ascertained for all purposes for which it is shown to be available, and this value should be arrived at by testing it to find out what advantages it possesses in and of itself, for the particular purposes — which it is claimed to be valuable.

In no event can you consider any evidence based on the storage capacity of the lake, or what it may be worth to the petitioner for reservoir or other purposes.

[fol. 310] Instruction No. 25

You are instructed that by "fair, cash market value" is meant the price which the property will bring when it is offered for sale, for cash, by one who desires but is not

obliged to sell it and is bought by one who is under no necessity of having it. It is not the value put on the property by the owner because of any sentiment which he has for the property nor because he may be unwilling to sell it.

[fol. 311] Instruction No. 26

You are further instructed that under the notice and petition in this proceeding the petitioner is seeking to raise the elevation of the waters of Lake Chelan and inundate the lands of the respondents described elsewhere in these instructions to a maximum elevation of 1100 feet above mean sea level, still water measurement, and that as between the petitioner and the respondents the petitioner is not required to maintain the said water at any particular level at any given time nor to raise said water to any particular level at any given time.

[fol. 312] Instruction No. 27

In determining the question of depreciation in market value you will take into consideration as elements of damage, as such may be shown from the evidence, the reasonable cost, if any, to permit the respondents to use and enjoy their property for any purpose for which it is now used or to which it may be reasonably put in the immediate future, including necessary docks, or landings, if any, and pumping plants, if any; and you will allow such reasonable sum on account thereof as you shall find from the evidence the fair cash market value of respondents' land and premises will be depreciated, if any; and such allowance, if any, may be made only to the extent of the depreciation in market value of said lands and premises.

[fol. 313] Instruction No. 29

You are further instructed that by preponderance of the evidence, as used in these instructions, is meant that greater and superior weight of the evidence which satisfies your minds.

Preponderance is not alone determined by the number of witnesses testifying to a particular fact or circumstance

or state of facts. If the material allegations of the cause are proven by such evidence as satisfies and produces conviction in your minds then the case has been proven by a preponderance of the evidence.

After fairly and impartially considering and weighing all the evidence in this case, the jury are at liberty to decide that the preponderance of the evidence is on the side which, in your judgment, is sustained by the more intelligent, the beetter informed, the more credible and the more disinterested witnesses, whether these are the greater or the smaller number.

The jury have no right, however, to capriciously disregard the testimony of the larger number of witnesses, nor to refuse to give whatever consideration, in your judgment, should be attached naturally to the fact, if it be a fact, that the larger number of witnesses have testified one way.

The element of numbers is proper to be considered with all the other elements for whatever, in the judgment of the jury, that element is worth, and the evidence of the smaller number of witnesses cannot be taken by the jury in preference to that of the larger number, unless the jury can say, on your oaths, that from all the facts and circumstances in the case it is more reasonable, more truthful, more disinterested and more credible.

[fol. 314] Instruction No. 30

In estimating damages the jury are to value the injury to the land owners without reference to the person of the owners or the state of their business. Damages cannot be allowed for an actual or supposed loss of profits on any business carried on upon the premises, or for inconvenience to the owners, damage to personal property, or the expense of removing it. Loss of profits are too speculative, remote and uncertain to be considered as a basis for ascertaining the market value of the property in this proceeding. The test is not what the land owner makes, but what is the market value of the land.

[fol. 315] Instruction No. 31

You have been permitted to view the premises involved in this action, which will be affected by the making of the

proposed changes, for the purpose of enabling you to better arrive at a correct determination of the questions submitted to you. You should, therefore, trust somewhat to your own judgment, in arriving at such determination.

One of the objects and purposes of the view which you have made, is to enable you to use your own judgment and senses, by obtaining such information as an eye witness can gain, of the character and condition of these premises, the uses to which they have been put, and to which they are applicable, the surroundings and conditions which are considered by reasonable men, in determining the value of the properties.

Another object is to enable you to better understand and apply the evidence of the witnesses who have testified before you, and you should remember, as part of the evidence in this case, what you have seen in viewing the premises. You have the right, and it is your duty, to use your senses, and to consider in arriving at your verdict, the knowledge and information acquired by such view.

In this case it is your duty to harmonize the testimony of the witne*ese*, if possible, so as not to impute false swearing to any witness. If this can be done consistently with the truth you should do so, but if you find it impossible to harmonize the testimony, and if you find further from the evidence of your senses of view, or from the testimony on the stand, that any witness has wilfully testified falsely concerning any material fact in the case, then you have the right to disregard his entire testimony, except insofar as you may find that the testimony of such witness is corroborated by other credible evidence or by facts and circumstances proved on the trial. And if, in your judgment, the [fol. 316] evidence is conflicting as to the value of the property and the amount of damages, you should resort to the knowledge gained by your view as bearing upon the weight to be given to the various and conflicting estimates and statements.

Instruction No. 32

You are further instructed that you are the sole judges of the facts in this case, and of the credit, if any, to be given to the respective witnesses who have testified. In deter-

mining the facts, it is your duty to consided the appearance and demeanor of the witnesses while on the witness stand, their manner of testifying, their apparent candor and frankness or lack of it, their bias or prejudice for or against the petitioner or respondents, if any shown, their apparent intelligence or lack of it, their interest in the result of the case, if any, their means of knowing the facts and circumstances in proof, if any, and all their surrounding circumstances, and determine the witness or witnesses most worthy of credit and give credit accordingly.

You have a right, in weighing the testimony, to judge from your own common observation of the ability to judge given facts from given opportunities, and you are not obliged to accept as true the testimony of any witness or witnesses if, in your opinion, judging from such common observation, they are or may be mistaken concerning the facts of which they speak.

[fol. 317] Instruction No. 33

If you, the jury, believe from the evidence that any witness in this case has wilfully sworn falsely on this trial as to any matter or thing material to the issues of the case, then the jury are at liberty to disregard the entire testimony of such witness, except insofar as such testimony has been corroborated by other evidence, or by the facts and circumstances proved on the trial.

The law does not say that you must disregard such evidence because such witnesses' testimony may be supported by other evidence such as to give the witness' story credit, but if you are satisfied that any witness wilfully testified falsely as to any one material thing, it is sufficient for you, if you think proper so to do, to disregard the entire testimony of such witness.

[fol. 318] Instruction No. 34

You are not to arrive at your verdict by lot or chance, nor should you render a quotient verdict. That is to say, you should not agree to be bound by the result of adding the individual amounts found by each juror to be his or her appraisal of damages, and then divide the total of these amounts by the number of jurors. Your verdict should be

based upon the judgment of all the jurors, or at least ten of your number, as to what in your opinion is the amount of damages that the respondents are entitled to, as I have defined the rights of the respective parties in these instructions.

[fol. 319] Instruction No. 35

In order to assist you in arriving at a fair and just verdict, in this case, and to advise the court of your conclusions as to each item, I will submit to you four special interrogatories, to each of which the answer is to be determined in the same manner you arrive at your general verdict,—that is, when ten of your number have agreed upon the answer, it is to be filled in and signed by your foreman. These interrogatories are:

1. What is the fair market value of the entire tract of the respondents shown as Exhibit 2? $—.

2. What is the fair market value of the strip of land proposed to be acquired by the petitioner, Chelan Electric Company, and including damage, if any, to the land of Respondent Alice Barbee Wick, by wave wash, erosion, seepage, inundation, or any similar cause, as the result of holding the waters up to the maximum elevation of 1100 feet, still water measurement, above mean sea level? $—.

3. State whether or not the remainder of the land owned by respondent Wick is diminished in market value by the taking of the strip referred to in Interrogatory No. 2, for the purpose stated in the petition. $—.

4. If you answer the foregoing interrogatory in the affirmative, then state how much the tract described in the preceding interrogatory is damaged or decreased in value. $—.

[fol. 320] Instruction No. 36

Upon the conclusion of argument by counsel for the respective parties you will retire to your jury room in charge of the bailiff and consider of your verdict.

One from among your number will be selected by you to act as your foreman and when you have arrived at a verdict, you will cause your foreman to sign that form which correctly embodies the result of your deliberations, announce the fact of your agreement to the bailiff in charge, who will communicate with the court, and return you into court for its reception.

The instructions as given by the court, the petition in the case, exhibits received in evidence and blank forms for your verdict and interrogatories will be handed to your foreman by the bailiff. These papers and exhibits you will carefully preserve without alteration or mutilation, and deliver to the bailiff at the close of your deliberations excepting the signed verdict and interrogatories, which your foreman will retain until it can be delivered in open court.

Ten of your number must agree before you can render a verdict in this case.

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[fol. 321] In Superior Court of Chelan County

[Title omitted]

Verdict

We the jury in the case of Chelan Electric Company, a corporation, plaintiff, vs. Alice Barbee Wick, et al., defendant, find the full compensation to be paid to the owners, and all tenants, encumbrancers, and others interested, for the taking or injuriously affecting the land, real estate, premises, and property described in the petition and bill of particulars in this action, and lands lying contiguous or adjacent thereto, together with the expense of reconstructing or replacing docks, and the acquiring by petitioner of the rights, and securing the release referred to, is the sum of $13,500. no/100.

Dated at Wenatche, Washington, this 30 day of June, A. D. 1927.

Ira C. Parsons, Foreman.

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

ANSWERS TO INTERROGATORIES—Filed June 30, 1927

1. What is the fair market value of the entire tract of land owned by the respondents as shown by the evidence.
Answer. $48,000 no/100.

2. What is the fair market value of the strip of land proposed to be acquired by the petitioner, Chelan Electric Company and including damage, if any, to the land of respondent, Alice Barbee Wick, by wave wash, erosion, seepage, inundation, or any similar cause, as a result of holding the waters of the lake up to the maximum elevation of 1100 feet, still water measurement, above mean sea level?
Answer. $12,500.

3. State whether or not the remainder of the land owned by respondent Alice Barbee Wick, is diminished in market value by the taking and inundation of the strip referred to in interrogatory No. 2, for the purpose stated in the petition.
Answer. Yes.

4. If you answer the foregoing interrogatory in the affirmative then state how much the said remainder of said land is damaged or decreased in value.
Answer. $1,000.

Dated this 30 day of June, 1927.

Ira C. Parsons, Foreman of the Jury.

[File endorsement omitted.]

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[fol. 322] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

EXCEPTIONS TO INSTRUCTIONS GIVEN AND TO REFUSING OF INSTRUCTIONS BY RESPONDENT ALICE BARBEE WICK—Filed July 2, 1927

Comes now the respondent, Alice Barbee Wick, by Adrien W. Vollmer, A. N. Corbin, John B. Shorett and J.

L. Baldwin, as attorneys of record herein, and still preserving her special appearance and objecting to the jurisdiction of the court both on the ground of defective service of process or notice and on the further ground of loss of jurisdiction by reason of the Respondent's petition for Removal to the District Court of the United States, and, reserving any right which she may have to file further and additional exceptions, within the time limited by law for filing said exceptions, and reserving the right to withdraw these exceptions and file other exceptions in place thereof within said time, and excepts to the instructions as given by the Court in the above entitled proceeding, filed June 30, 1927, or thereafter.

1. Except to instruction No. 5 as given for the reasons that the same is contrary to law and the evidence; that it is a charge upon an abstract principle and not upon an issue of law or fact before the jury for determination; that it is argumentative; that it is a comment on the facts.

2. Except to Instruction No. 6 as given for the reasons that the same is contrary to law and the evidence; that it is a charge argumentative in nature; that it unduly limits the premises which are involved in the action and excludes lands involved in the proceedings and not described in the Bill of Particulars; that it is a charge upon an abstract question and not upon any issue for the jury to decide; that it is a comment on the facts.

3. Except further to that portion of Instruction No. 6 as follows: "The Chelan Electric Company has already ac- [fol. 323] quired, through purchase, the major portion of the property necessary for this power development," for the reasons that have been heretofore stated and for the further reason that the same is a charge upon a matter which is not an issue either of law or fact for the jury to consider; that the same is a comment upon the Respondent's situation as compared with other property owners who may have surrendered to the condemning party, and highly prejudicial to the rights of Respondents to a fair and impartial trial.

4. Except to instruction No. 7 as given for the reasons that the same is contrary to law and the evidence; that it

is a comment upon disputed issues of fact as to areas; that it unduly restricts the consideration of the jury to the strip described in the Bill of Particulars and excludes damages to other lands not shown therein; that it submits to the jury to determine as a matter of law what rights, if any, and privileges, if any, the respondent will retain and the Petitioner take. That it is a charge upon a matter not at issue under the Notice and petition under which the Petitioner seeks to acquire rights sought in this proceeding.

5. Except to instruction No. 9 as given for the reason that the same is contrary to law and the evidence, that it is a comment upon issues of fact not relevant to this issue.

6. Except to instruction No. 16 as given for the reasons that the same is contrary to law and the evidence; that it is in conflict with other instructions as to the elevation and the amount of property which is sought to be taken and damaged.

7. Except to instruction No. 17 as given for the reasons that it is contrary to the evidence and the law; that it is argumentative; that it is in conflict with other instructions given upon the question of compensation.

8. Except to Instruction No. 18 as given for the reasons that the same is contrary to the law and the evidence; that it is in conflict with other instructions given on market value; that it restricts the determination of values shown or proposed to be shown on the date of their verdict and excludes from consideration of the jury the value at the time of trial, irrespective of the effect of Petitioner taking or damaging of Respondent's property upon such value at the time of trial. That it withdraws from the jury as an element of value "a sudden demand for the sale thereof," such sudden demand being an element of value under the law.

9. Except to instruction No. 19 as given for the reasons that the same is contrary to law and the evidence.

10. Except to instruction No. 20 as given for the reasons that the same is contrary to law and the evidence and for the further reasons as given in exceptions to No. 21 following.

11. Except to Instruction No. 21 as given for the reason that it is contrary to law and the evidence; that it is a comment on the facts; that it leaves to the determination of the jury as a matter of law what elements enter into market value; that it gives undue prominence to speculative values and by inference, in connection with other instructions amounts to a charge that Respondent's evidence of value is speculative.

12. Except to Instruction No. 22 as given for the same reason as assigned for Instruction No. 21, supra.

[fol. 324] 13. Except to instruction No. 24 as given for the reasons that it is contrary to law and the evidence; and for the further reasons as assigned for Instruction- No. 21 and 22, supra; that it is in conflict with other instructions given; that it excludes from consideration as an element of value the location of the property with regard to its surroundings and the general attractiveness of that surrounding as a resort.

14. Except to Instruction 27 as given for the reasons that it is contrary to law and the evidence; that it permits the jury to consider costs of removal of permanent buildings or structures upon the land and which would in law be a part of that land required to be valued as such and submits an erroneous element of purported salvage thereof to be cast upon the Respondents in lieu of compensation in money; and raises a wrong inference and is contradictory, ambiguous and indefinite in its meaning.

15. Except to instruction No. 29 as given for the reasons that the same is contrary to law and the evidence; and for the further reason that under the evidence adduced it amounts to a comment on the evidence, the witnesses preponderating in numbers in favor of the Petitioner on the issue of value and damages.

16. Except to Instruction No. 30 as given for the reason that the same is contrary to law and the evidence in that the fact of an existing and going business in the location involved is an element to be considered in arriving at the value of the land taken; that it excludes values for resort purposes as such; that it prevents the consideration of the

jury of any evidence indicating the probable value of the same or of the premises proposed to be flooded or otherwise injuriously affected.

17. Except to Instruction No. 31 as given for the reasons that the same is contrary to law and the evidence; and especially except to that portion thereof reading as follows: "You should, therefore, trust somewhat to your own judgment, in arriving at such determination," for the reasons that in connection with that portion thereof reading "for the purpose of enabling you to better arrive at a correct determination of the questions submitted to you" that each and every thereof is a permission to the jury to consider matters other than the evidence in the case as presented to them in the trial of the cause.

18. Except to Instruction No. 34, as given for the reasons that the same is contrary to law and the evidence; that an agreement to be bound by such a verdict made after deliberation as to the amount as thus arrived at and adoption of such as the independent views of the individual jurors is not a quotient verdict.

19. Except to instruction No. 35 as given for the reasons that the same is contrary to law and the evidence and the facts; that there was no evidence given as to the value of only that portion of Respondent's lands as shown on Petitioner's Exhibit 2. That said instruction was ambiguous and indefinite and described the land to be flooded by the Petitioner in a manner different from the notice and petition in this cause of action against the said non-resident Respondent, Alice Barbee Wick.

20. Except to any instruction of the court by which the premises to be taken or injuriously affected are described differently from the same as described in the original Notice [fol. 325] and Petition in this cause of action, and excepts to each and every instructions of the court under which any inference is given that land above the 1100 ft. mean sea level which will be eroded or otherwise affected by wave wash, is land not flooded but is laand injurously affected.

21. Except to each and every instruction of the Court in which the 1100 level is referred to as 1100 feet "still water measurement" or otherwise differently than it was

referred to in the original Notice and Petition in condemnation.

22. Except to each and every instruction of the Court in which the title pretended to be acquired by the Petitioner in these condemnation proceedings is described differently in said instructions than it was in the original Notice and Petition in this cause of action.

23. Exceptions to refusal of instructions: Except further to the refusal of the Court to give each and every of the special requests for instructions numbered 1 to 9 both inclusive, as heretofore filed in said cause and presented to the court as the same appear in the records and files herein.

24. Except to the refusal of the court to give the special request No. 1 as to the measure of damages, etc.

25. Except to the refusal of the Court to give the special request No. 2 as to the burden of proof, etc.

26. Except to the refusal of the Court to give special request No. 3 as to the market value, etc.

27. Except to the refusal of the court to give the special request No. 4 as to depreciation, etc.

28. Except to the refusal of the court to give the special request No. 5 as to measure of damages to the remainder, etc.

29. Except to the refusal of the court to give the special request No. 6 as to measure of damages to the remainder, etc.

30. Except to the refusal of the court to give the special request No. 7 as to depreciation of value of the remainder, etc.

31. Except to the refusal of the court to give the special request No. 9 as to requirements for maintaining certain water levels, etc.

32. Except to the refusal of the Court to give the special request No. 3-A as to the market value, etc.

Adrien W. Vollmer, Adrien W. Vollmer, A. N. Corbin, A. N. Corbin, Per A. N. C., John B. Shorett, John B. Shorett, per A. N. C., J. L. Baldwin, per A. N. C., J. L. Baldwin, Attys. for Respondent Alice Barbee Wick.

Service by true copy admitted this — day of July, 1927.
—— ——, Attys. for Petitioner.

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[fol. 326] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed July 2, 1927

Comes now the respondent, Alice Barbee Wick, and still preserving and not waiving her special appearance, and objecting to the jurisdiction of the Court both on the ground of defective service of process or notice and on the further ground of loss of jurisdiction by reason of said respondent's petition for removal to the District Court of the United States, moves the court to set aside the verdict of the jury herein and to grant a new trial of said cause, upon the following grounds and for the following causes, to-wit:

1. Irregularity in the proceedings of the court, jury and adverse party and the orders of the court and abuse of discretion by which said respondent was prevented from having a fair trial;

2. Misconduct of Petitioner and the jury;

3. Accident and surprise which ordinary prudence could have guarded against;

4. Newly discovered evidence, material for said respondent making this application, which she could not with reasonable diligence have discovered and produced at the trial;

5. Inadequate damages appearing to have been given under the influence of passion or prejudice;

6. Error in the assessment of the amount of recovery in that it is too small;

7. Insufficiency of the evidence to justify the verdict and that the verdict is against the law;

8. Error in law occurring at the trial and excepted to at the time by the party making this application.

[fol. 327] Adrien W. Vollmer, Adrien W. Vollmer, J. L. Baldwin, J. L. Baldwin, Attorneys for Petitioner Alice Barbee Wick, 530 Burke Building, Seattle, Washington.

Copy of the foregoing motion for new trial received this 1st day of July, 1927.

Post & Russell, Charles S. Albert, Edwin C. Mathias, Attorneys for Petitioner.

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[fol. 328] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

ADDITIONAL EXCEPTIONS TO INSTRUCTIONS GIVEN AND TO REFUSING OF INSTRUCTIONS BY RESPONDENT ALICE BARBEE WICK—Filed July 7, 1927

Comes now the respondent, Alice Barbee Wick, by Adrien W. Vollmer, A. N. Corbin, John B. Shorett and J. L. Baldwin, as attorneys of record herein, and still preserving her special appearance and objecting to the jurisdiction of the Court both on the ground of defective service of process or notice and on the further ground of loss of jurisdiction by reason of the Respondent's Petition for Removal to the District Court of the United States, and makes further and additional exceptions to the Instructions as given by the court in the above entitled proceeding filed June 30, 1927 or thereafter.

1. Except to Instruction No. 1 as given wherever same says "Respondents" as erroneous in law and not applicable to the facts or the evidence and submitting a false issue, and contradictory to other instructions, in that it leaves it open for the jury to award part of the damage to the county.

2. Except to Instruction No. 2 as given for the same reasons as assigned to No. 1 supra.

3. Except further to instruction No. 5 as given for the further reasons as assigned to No. 1 supra; and for the further reason that it is immaterial and submits to the jury immaterial issues and evidence and is a comment upon the evidence or the facts, and submits to the jury as having a binding force upon this respondent or a material bearing in this case, a Permit from or contract of the Petitioner with the State Supervisor of Hydraulics of the State of Washington and the Federal Power Commission of the United States Government, neither of which has any validity which is available to this Respondent.

4. Except further to Instruction No. 6 as given for the further reason that it is submitting immaterial issues and commenting on the evidence and facts and deciding the facts, which is solely within the province of the jury.

[fol. 329] 5. Except further to Instruction No. 7 as given for the reason that it is not applicable to the facts and submits false issues as to the County, etc.

6. Except further to Instruction No. 9 as given for the further reason that the same is erroneous and misleading, not applicable to the facts or evidence, in this case, and further, because there is no evidence in this case of the acquisition or building of any new road, but the evidence shows that the old road has been vacated and is now the property of this respondent free and clear of any easement.

7. Except to Instruction No. 10 as given for the reason that the same is erroneous in law and misleading and not applicable to the facts or the evidence in this case, and that there is no evidence in this case of the acquisition or building of any new road on this property, and invites the jury to reduce its award because there will be another award in another case.

8. Except to Instruction No. 11 as given for the reason that the same is erroneous in law and misleading, not applicable to the facts or the evidence in this case, submits a false issue and is contradictory to the other instructions in permitting the jury to divide the damages with the county.

9. Except to Instruction No. 14 as given for the same reason as assigned for Instruction No. 11 supra.

10. Except to Instruction No. 15 as given for the reason that the same is erroneous and not a proper statement of the law.

11. Except further to Instruction No. 17 as given, for the further reason that the same is highly prejudicial in submitting to the jury the implication that the Respondent is taking and appropriating the property of the Petitioner, instead of the reverse, and so puts the burden of proof upon the respondent as well. This instruction shows apparent animus of the court.

12. Except further to Instruction No. 18 as given for the reason that same is misleading, not applicable to the facts or evidence of this case and not the proper measure of damages.

13. Except further to Instruction No. 20 as given for the further reason that the same is misleading and prejudicial and unduly limiting the future time with reference to which the present market value may be found. ("Immediate future").

14. Except further to Instruction No. 21 as given for the further reasons that it is prejudicial in repetition and emphasis and unduly limiting the statement of value and the wrong measure of damages.

15. Except further to Instruction No. 22 as given for the further reason that it is not applicable to the facts or the evidence, prejudicial in repetition and emphasis of matter given in other instructions, and a wrong statement of the law with reference to measure of damages and with reference to unwillingness to sell, which has already been referred to once or twice.

[fols. 330-332] 16. Except to Instruction No. 23 as given for the reason that it is erroneous in law and not applicable to the facts or the evidence, and particularly except to the statement as to the estimation of compensation as limiting the demand to too small a territory, and too restricted in time in the future as to prospective wants. And particularly the last paragraph in said instruction as to the unwillingness of the owner, as a prejudicial repetition and undue emphasis.

17. Except further to Instruction No. 24 as given for the further reason that it is prejudicial in repetition and undue emphasis.

18. Except to Instruction No. 25 as given for the reason that it is erroneous in law and not applicable to the facts and the evidence in this case, given under undue emphasis by repetition, and in the use of the word "crash."

19. Except further to Instruction No. 31 as given for the further reason that the purpose of a view is not to give a substitute for evidence, but only to enable the jury to better understand the evidence given. The court says "Remember as part of the evidence what you have seen."

Adrien W. Vollmer, Adrien W. Vollmer, A. N. Corbin, A. N. Corbin, John B. Shorett, J. L. Baldwin, Attorneys for Respondent Alice Barbee Wick.

Service by true copy admitted this — day of July, 1927.
—— ——, Attorneys for Petitioner.

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[fol. 333] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,
vs.
ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

JUDGMENT ON VERDICT—Filed July 9, 1927

This cause having come regularly on for trial before the above entitled court, Honorable W. O. Parr, Judge thereof,

and a jury, at the Court House in the City of Wenatchee, Chelan County, Washington; the petitioner appearing by its attorneys Charles S. Albert, and Edwin C. Matthias, and the Respondent, Alice Barbee Wick appearing by her attorneys A. N. Corbin, Adrien W. Vollmer, Julius Baldwin and John B. Shorett, and respondent, Chelan County, Washington, appearing by its attorney J. A. Adams, and it appearing to the court that an order adjudicating public use and necessity has heretofore been entered herein, and a jury having been sworn to try the issues herein, and having duly returned its verdict making an assessment of damages to the Respondent, Alice Barbee Wick, herein, by reason of the appropriation and use of the property described in the petition and bill of particulars herein, and having ascertained, determined and awarded the amount of damages to be paid to the owners of such property, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property, and for acquiring the rights and securing the release hereinafter referred to, for the purpose of the enterprise of the petitioner herein, irrespective of any benefits from any improvements proposed by the [fol. 334] Petitioner; such verdict being in the amount of $13,500.00;

It is ordered, adjudged and decreed, That just compensation be paid by the Chelan Electric Company to the owner of said property, Alice Barbee Wick, and to all tenants, encumbrancers and others interested, for the taking and injuriously affecting such land, real estate premises or other property, and for acquiring the rights and securing the release hereinafter referred to, in the sum of $13,500.00, with costs to the Respondent Alice Barbee Wick, to be taxed in the usual manner.

It is further ordered, adjudged and decreed, That said Respondent Alice Barbee Wick, do have and recover from the Chelan Electric Company said sum for the taking and appropriating of the lands, real estate, premises property rights and interest, owned by said Respondent in said property hereinafter described, for the uses set forth in the petition on file herein, and for acquiring the rights and securing the release set forth in said petition, order and bill of particulars, and upon payment by the Chelan Elec-

tric Company of said just compensation and damages to said Respondent, interested in said premises as owner, and to those interested as tenants, encumbrancers or otherwise, or upon depositing the same for the use and benefit of said persons, with the clerk of the above entitled court, to be paid out under the direction of said court or the judge thereof, that the property and rights hereinafter described, free and clear from all liens and encumbrances of every nature whatsoever, shall pass to and become vested in the Chelan Electric Company, a corporation, for the uses and purposes hereinafter set forth. The property and rights hereby condemned and appropriated to the use of the Chelan Electric Company are situated in the County of Chelan, State of Washington, and described as follows, to-wit:

The right in perpetuity to inundate and overflow, by impounding the waters of Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1100 [fol. 335] feet, still water measurement, above mean sea level, and to damage the land herein described, and all lands of the respondent, Alice Barbee Wick, lying contiguous or adjacent thereto, by wave wash, erosion, seepage, inundation or any similar cause, as a result of holding the waters to said elevation, and included in the following described real estate, situate in the County of Chelan, State of Washington, particularly described as follows, to-wit:

Government Lots one (1) two (2) three (3) and four (4) and the southwest quarter of the southwest quarter of section three (3) lots five (5) and six (6), section four (4), Lot One (1), section ten (10), Lot forty-two (42), Section eleven (11); and lot forty-three (43), all in Township twenty-seven (27) North Range twenty-one (21) E. W. M., together with all shore lands of the second class, situated in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, and all littoral and riparian rights thereinto belonging or appertaining, subject to the right of the Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to, or abutting upon that portion of the Government Meander line lying in front of Lot One (1), Section Ten (10), and Lot four (4), Section three (3), Township twenty-

seven (27) North, Range twenty-one (21) E. W. M., and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners, dated December 6th, 1909 (Application No. 7077), under and by virtue of Chapter 125, Session Laws of 1907.

The lands to be inundated and overflowed being situated in said County and State, and a metes and bounds survey description thereof being as follows, to-wit:

All that part of Government Lot 43, section 12, township 27 North Range 21 E. W. M., together with all shore lands of the second class, situated in front of, adjacent to, or abutting upon that portion of the Government Meander Line lying in front of the above described property more particularly described as follows, to-wit: Beginning at a point in the west boundary of section 12, distant 3589.1 feet from the southwest corner thereof, thence in a southeasterly direction along a direct line making a southeasterly included angle of 87 degrees and 44 minutes with said boundary a distance of 123.6 feet, thence angle right 35 degrees 22 minutes 229.8 feet, thence angle right 4 degrees 35 minutes 173.6 feet, thence angle right 4 degrees 31 minutes 95.2 feet, thance angle right 12 degrees 45 minutes 246.2 feet, thence angle left 13 degrees 42 minutes 192.4 feet, thence angle right 5 degrees 19 minutes 121.8 feet, thence angle right 15 degrees 25 minutes 228.7 feet, thence angle left 18 degrees 26 minutes 368.1 feet, thence angle left 16 degrees 42 minutes 128.5 feet; thence angle right 7 degrees 43½ minutes 122.11 feet thence angle left 2 degrees 36 minutes 133.7 feet, thence angle right 4 degrees 10 minutes 91.1 feet, thence angle left 7 degrees 25 minutes 138.4 feet, thence angle right 4 degrees 36 minutes 143.9 feet, thence angle right 7 degrees 8 minutes 202.6 feet; thence angle left 26 degrees 11½ minutes 115.7 feet, thence angle right 25 degrees 35 minutes 105.4 feet, thence angle left 31 [fol. 336] degrees 57 minutes 198.6 feet, thence angle right 12 degrees 51 minutes 231.2 feet, thence angle left 34 degrees 38 minutes 134.2 feet, thence angle right 20 degrees 52 minutes 89.9 feet to a point in the east boundary line of Lot 43, Section 12 distant 874.6 feet from the southeast

corner thereof, thence north along said boundary a distance of 168.0 feet more or less to the northerly boundary of the shore lands, thence northwesterly along said boundary of shore lands lying in front of Government Lot 43 to an intersection with the west boundary of section 12 (produced) thence south along the west boundary of section 12 a distance of 125.0 feet more or less to the point of beginning, containing an area of 7.10 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 42 and 43, section 11, Township 27 North Range 21 E. W. M., together with all shore lands of the second class, situated in front of, adjacent to, or abutting upon that portion of the Government Meander line in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the eats boundary line of section 11, Township 27 North Range 21 E. W. M., distant 3589.1 feet from the southeast corner thereof thence northwesterly along a direct line making a northwesterly included angle of 87 degrees and 44 minutes with said boundary a distance of 20.0 feet, thence angle right 20 degrees 15 minutes 96.5 feet, thence angle left 19 degrees 17 minutes 132.5 feet, thence angle *angle* left 31 degrees 12 minutes 204.8 feet, thence angle right 19 degrees 58 minutes 305.5 feet, thence angle right 24 degrees 1 minute 341.6 feet; thence angle left 12 degrees 9 minutes 257.5 feet, thence angle left 4 degrees 20 minutes 580.0 feet, thence angle right 7 degrees 6 minutes 170.0 feet, thence angle left 24 degrees 5 minutes 250 feet, thence angle right 11 degrees 21 minutes 182.0 feet, thence angle left 27 degrees 22 minutes 143.0 feet, thence angle right 23 degrees 38 minutes 300.0 feet, thence angle right 17 degrees 44 minutes 133.0 feet, thence angle right 13 degrees 55 minutes 222.0 feet, thence angle left 18 degrees 55 minutes 97.0 feet, thence angle left 14 degrees 40 minutes 103.0 feet, thence angle right 22 degrees 28 minutes 240 feet, thence angle right 27 degrees 53 minutes 395.0 feet, thence angle left 20 degrees 40 minutes 78.0 feet, thence angle left 26 degrees 10 minutes 119 feet, thence angle right 17 degrees 35 minutes 89.0 feet, thence angle right 24 degrees 20 minutes 287 feet, thence angle left 15 degrees 46 minutes 165.0 feet, thence angle right 30 degrees.

12 minutes 241.2 feet; thence angle left 14 degrees 54 minutes 173.0 feet, thence angle right 15 degrees 33 minutes 115.0 feet, thence angle left 11 degrees 49 minutes 194.0 feet, thence angle right 16 degrees 7 minutes 160.0 feet to a point in the west boundary line of section 11 distant 4525 feet from the southwest corner thereof thence north along said boundary of section 11 a distance of 55.0 feet, more or less to the northerly boundary of the shore lands thence southeasterly along said boundary of shore lands lying in front of Government lots 42 and 43 to an intersection with the east boundary (produced) Section 11, thence south along the east boundary of section 11 a distance of 125 feet more or less to the point of beginning, containing an area of 7.51 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 1, Section 10, Township 27 north Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, more particularly described as follows, to-wit:

[fol. 337] Beginning at a point in the north boundary line of section 10 distant 4732.0 feet from the northwest corner thereof, thence southeasterly along a direct line making a southeasterly included angle of 55 degrees and 30 minutes a distance of 274.6 feet thence angle left 7 degrees 2 minutes 180.0 feet thence angle right 18 degrees 14 minutes 98.0 feet, thance angle left 24 degrees 27 minutes 143.9 feet thence angle left 12 degrees 55 minutes 96.0 feet, thence angle right 22 degrees 0 minutes 190.0 feet to a point in the east boundary line of section 10, thence north along said east boundary line of section 10 a distance of 55.0 feet more or less to the northerly boundary of the shore lands, thence northwesterly along the said boundary of the shore lands lying in front of Government Lot 1, to an intersection with the north boundary of section 10, thence west along said boundary of section 10 a distance of 60.0 feet more or less to the point of beginning, containing an area of 0.92 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 4 Section 3 Township 27 North Range 21 E. W. M., together with all shore lands

of the second class situated in front of, adjacent to or abutting upon that portion of the Government Meander Line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the south boundary line of section 3, distant 4732.0 feet, from the southeast corner thereof, thence northwesterly along a direct line making a northwesterly included angle of 55 degrees and 30 minutes with said boundary a distance of 97.0 feet, thence angle right 5 degrees 36½ minutes 187.0 feet, thence angle right 2 degrees 6 minutes 87.7 feet, thence angle left 57 degrees 0 minutes 67.6 feet, thence angle right 33 degrees 51 minutes 171.2 feet, thence angle right 0 degrees 33 minutes 72.0 feet, thence angle left 11 degrees 41 minutes 370.2 feet to a point in the west boundary line of Lot 4, Section 3 distance 653.0 feet from the southwest corner thereof, thence north along said boundary line of lot 4 a distance of 50.0 feet more or less to the northerly boundary of the shore lands, thence southeasterly along the said boundary of the shore lands lying in front of Government Lot 4 to an intersection with the south boundary of section 3, thence west along said boundary a distance of 60.0 feet, more or less, to the point of beginning, containing an area of .98 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 1 and 2 and 3 of Section 3, Township 27 North, Range 21 E. W. M., together with all shore lands of the second class, situate in front of, adjacent to, or abutting upon that portion of the Government Meander line lying in front of the above described property more particularly described as follows, to-wit: Beginning at a point in the west boundary of Section 3, distant 2198.0 feet, north from the southwest corner thereof, thence in a southeasterly direction along a direct line making a southeasterly included angle of 68 degrees and 51 minutes with said boundary a distance of 308.3 feet, thence angle left 13 degrees 17 minutes 103.2 feet, thence angle right 9 degrees 45 minutes 83.3 feet, thence angle right 35 degrees 18 minutes 121.7 feet, thence angle left 29 dgrees 45 minutes 136.2 feet; thence angle left 8 degrees 15½ minutes 232.8 feet, thence angle right 17 degrees 53 minutes 185.5 feet, thence angle right 20 degrees 8 minutes 114.5 feet, thence angle left 18 degrees 42 minutes 116.8 feet,

thence angle right 13 degrees 26½ minutes 87.3 feet, thence angle left 20 degrees 15½ minutes 192.0 feet, thence angle left 25 degrees 24½ minutes 311.2 feet, thence angle left 11 degrees 50 minutes 416.1 feet, thence angle right 3 degrees 43 minutes 61.4 feet, thence angle right 33 degrees [fol. 338] 15 minutes 178 feet, thence angle right 1 degree and 29 minutes 218.3 feet thence angle right 1 degree 29 minutes 191.8 feet, thence angle right 6 degrees 42½ minutes 174.6 feet, thence angle right 29 degrees 20½ minutes 49.4 feet, thence angle left 28 degrees 44 minutes 88.4 feet; thence angle left 16 degrees 24 minutes 149.3 feet, thence angle right 4 degrees 43½ minutes 53.2 feet, thence angle right 19 degrees 8 minutes 122.4 feet, thence angle left 9 degrees 29 minutes 95.4 feet, thence angle left 6 degrees 10 minutes 133.0 feet, thence angle left 13 degrees 57 minutes 111.9 feet, thence angle right 19 degrees 24 minutes 91.5 feet, thence angle left 43 degrees 30 minutes 151.8 feet, thence angle right 11 degrees 8½ minutes 83.3 feet, thence angle right 16 degrees 36½ minutes 89.3 feet to a point in the east boundary line of Lot 3, Section 3, distant 653.0 feet from the southeast corner thereof, thence north along said boundary a distance of 50.0 feet more or less to the northerly boundary of the shore lands, thence westerly along the northerly boundary of the shore lands lying in front of Government lots 1, 2, and 3 to an intersection with the east boundary line (produced) of section 4, Township 27 North Range 21 E. W. M., thence south along said boundary of Section 4 a distance of 117.1 feet more or less to the point of beginning containing an area of 8.82 acres, more or less, situated in Chelan County State of Washington.

All that part of Government lots 5 and 6 Section 4 Township 27 North Range 21 E. W. M., togeher with all shore lands of the second class situate in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the abovedescribed property more particularly described as follows, to-wit:

Beginning at a point in the east boundary of Section 4, Township 27 North Range 21 E. W. M., distant 2198.0 feet north from the southeast corner thereof thence northwesterly along a direct line making a northwesterly included angle of 68 degrees and 51 minutes a distance of 3.3 feet, thence angle left 5 degrees 23 minutes 208.9 feet, thence

angle right 20 degrees 44 minutes 83.3 feet, thence angle right 26 degrees 52 minutes 99.2 feet, thence angle right 21 degrees 19 minutes 134.4 feet, thence angle right 9 degrees 36 minutes 231.2 feet, thence angle left 17 degrees 31 minutes 124.7 feet, thence angle right 25 degrees 43 minutes 108.2 feet, thence angle left 25 degrees 50 minutes 129.8 feet, thence angle right 11 degrees 8½ minutes 83.3 feet, thence angle left 11 degrees 50 minutes 69.0 feet, thence angle left 30 degrees 8 minutes 176.0 feet, thence angle left 8 degrees 3 minutes 77.0 feet, thence angle right 19 degrees 50 minutes 133.8 feet, thence angle right 24 degrees 21 minutes 114.9 feet, thence angle left 21 degrees 57 minutes 144.0 feet, thence angle left 5 degrees 51 minutes 96.0 feet, thence angle right 18 degrees 37 minutes 50.1 feet to a point in the north boundary of Government Lot 5, Section 4, distant 550.2 feet from the northwest corner thereof, thence easterly along said boundary a distance of 355.0 feet more or less to the easterly boundary of the shore lands, thence southerly along the easterly boundary of the shore lands lying in front of government Lots 5 and 6 to an intersection with the easterly boundary (produced) Section 4, Township 27 North Range 21 E. W. M., thence south along said boundary of section 4 a distance of 117.1 feet, more or less to the point of beginning; containing an area of 5.92 acres, more or less, situate in Chelan County, State of Washington.

[fol. 339] It is further ordered, adjudged and decreed, that upon such payment being made by the Chelan Electric Company, that a decree shall be entered in accordance herewith releasing said Chelan Electric Company from any and all liability for any and all damages to the lands and property above described, and to any and all pumps, docks, and other property, in any manner arising from or to grow out of the impounding and storing of the waters of said Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1,100 feet, still water measurement, above mean sea level, to which judgment respondent Wick excepts and which exception is allowed.

Done in open court this 9th day of July, 1927.

W. O. Parr, Judge.

[fol. 340] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

v.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

DECREE OF APPROPRIATION—Filed July 9, 1927

This cause coming on regularly for hearing, upon the application of Petitioner herein for a decree of Appropriation of the property mentioned in the petition on file herein; and it appearing to the court that heretofore a verdict was duly rendered in said cause, in favor of the Respondent Alice Barbee Wick, in the sum of $13,500 and that thereafter, to-wit, on the 9th day of July, 1927, a judgment was duly and regularly entered upon said verdict, in favor of the respondent Alice Barbee Wick, in the sum of $13,500 with interest to date and costs to be taxed; and it further appearing to the Court that said petitioner has heretofore, to-wit, on the 9th day of July, 1927, deposited with the clerk of the above entitled court, the said sum of $13,500 with interest to date of $22.50, and $298.40 taxed as costs, for the benefit of the Respondent, to be paid out under the direction of this court or the judge thereof.

Now, on motion of Charles S. Albert, and Edwin C. Matthias attorneys for said petitioner, it is hereby

Ordered, adjudged and decreed, That there is hereby appropriated and granted to, and vested in the Chelan Electric Company, a corporation, the Petitioner herein, for its corporate purposes the following described property, lands and premises situate in the County of Chelan, State of Washington, towit:

[fol. 341] The right in perpetuity to inundate and overflow, by impounding the waters of Lake Chelan and the Chelan River, and raising the same to a maximum elevation of 1100 feet still water measurement, above mean sea level, and to damage the lands herein described and all

lands of the respondent Alice Barbee Wick, lying contiguous or adjacent thereto, by wave wash, erosion, seepage, inundation or any similar cause, as a result of holding the waters to said elevation, and included in the following described real estate situate in the County of Chelan, State of Washington, particularly described as follows, to-wit:

Government lots one (1) two (2) three (3) and four (4) and the southwest quarter of the southwest quarter of Section three (3); Lots five (5) and six (6), Section four (4); Lot one (1) Section ten (10); Lot Forty-two (42) Section eleven (11); Lot forty-three (43) all in Township twenty-seven (27) North Range twenty-one (21) E. W. M., together with all shore lands of the second class situate in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, and all littoral and riparian rights thereunto belonging or appertaining, subject to the right of the Chelan Electric Company to perpetually back and hold water upon and over the shore lands situate in front of, adjacent to or abutting upon that portion of the Government Meandor Line lying in front of Lot One (1), Section ten (10) and Lot four (4) Section three (3), Township twenty-seven (27) North Range Twenty-one (21) E. W. M. and to overflow and inundate the same to the high water mark of Lake Chelan, as granted by the order of the State Board of Land Commissioners, dated December 6th, 1909 (Application No. 7077) under and by virtue of Chapter 125, Session Laws of 1907.

The lands to be inundated and overflowed being situated in said County and State, and a metes and bounds survey description thereof being as follows:

All that part of Government Lot 43, Section 12, Township 27 North Range 21 E. W. M., together with all shore lands of the second class, situated in front of, adjacent to or abutting upon that portion of the Government Meander Line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the west boundary of section 12, distant 3589.1 feet from the southwest corner thereof thence in a south-

easterly direction along a direct line making a southeasterly included angle of 87 degrees and 44 minutes with said boundary a distance of 123.6 feet, thence angle right 35 degrees 22 minutes 229.8 feet, thence angle right 4 degrees 35 minutes 173.6 feet, thence angle right 4 degrees 31 minutes 95.2 feet, thence angle right 12 degrees 45 minutes 246.2 feet, thence angle left 13 degrees 42 minutes 192.4 feet, thence angle right 5 degrees 19 minutes 121.8 feet, thence angle right 15 degrees 25 minutes 228.7 feet, [fol. 342] thence angle left 18 degrees 26 minutes 368.1 feet, thence angle left 16 degrees 42 minutes 128.5 feet, thence angle right 7 degrees 43½ minutes 122.1 feet, thence angle left 2 degrees 36 minutes 133.7 feet, thence angle right 4 degrees 10 minutes 91.1 feet, thence angle left 7 degrees 25 minutes 138.4 feet, thence angle right 4 degrees 36 minutes 143.9 feet, thence angle right 7 degrees 8 minutes 202.6 feet, thence angle left 26 degrees 11½ minutes 115.7 feet, thence angle right 25 degrees 35 minutes 105.4 feet, thence angle left 31 degrees 57 minutes 198.6 feet, thence angle right 12 degrees 51 minutes 231.2 feet, thence angle left 34 degrees 38 minutes 134.2 feet thence angle right 20 degrees 52 minutes 89.9 feet to a point in the east boundary line of Lot 43, section 12, distant 874.6 feet from the southeast corner thereof, thence north along the said boundary a distance of 168.0 feet more or less to the northerly boundary of the shore lands, thence northwesterly along said boundary of shore lands lying in front of Government Lot 43 to an intersection with west boundary of Section 12 (produced), thence south along the west boundary of Section 12 a distance of 125.0 feet more or less to the point of beginning, containing an area of 7.10 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 42 and 43, Section 11 Township 27 North, Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to, or abutting upon that portion of the Government Meander line in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the east boundary line of Section 11, Township 27 North Range 21 E. W. M., distant 3589.1 feet from the southeast corner thereof, thence northwesterly along a di-

rect line making a northwesterly included angle of 87 degrees 44 minutes with said boundary a distance of 20.0 feet, thence angle right 20 degrees 15 minutes 96.5 feet, thence angle left 19 degrees 17 minutes 132.5 feet, thence angle left 31 degrees 12 minutes 204.8 feet, thence angle right 19 degrees 58 minutes 305.5 feet, thence angle right 24 degrees 1 minute 341.6 feet thence angle left 12 degrees 9 minutes 257.5 feet, thence angle left 4 degrees 20 minutes 580.0 feet, thence angle right 7 degrees 6 minutes 170.0 feet, thence angle left 24 degrees 5 minutes 250.0 feet, thence angle right 11 degrees 21 mniutes 182. feet, thence angle left 27 degrees 22 minutes 143.0 feet, thence angle right 23 degrees 38 minutes 300.0 feet, thence angle right 17 degrees 44 minutes 133.0 feet, thence angle right 13 degrees 55 minutes 222.0 feet, thence angle left 18 degrees 55 minutes 97.0 feet, thence angle left 14 degrees 40 minutes 103.0 feet, thence angle right 22 degrees 28 minutes 240.0 feet, thence angle right 27 degrees 53 minutes 395.0 feet, thence angle left 20 degrees 40 minutes, 78.0 feet, thence angle left 26 degrees 15 minutes 119.0 feet, thence angle right 17 degrees 35 minutes 89.0 feet, thence angle right 24 degrees 20 minutes 287.0 feet, thence angle left 15 degrees 46 minutes 165.0 feet, thence angle right 30 degrees 12 minutes 241.2 feet, thence angle left 14 degrees 54 minutes 173.0 feet, thence angle right 15 degrees 33 minutes 115.0 feet, thence angle left 11 degrees 49 minutes 194.0 feet thence angle right 16 degrees 7 minutes 160.0 feet to a point in the west boundary line of section 11, distant 4525.0 feet from the southwest corner thereof, thence north along said boundary of section 11 a distance of 55.0 feet more or less to the northerly boundary of the shore lands, thence southeasterly along said boundary of shore lands lying in front of Government lots 42 and 43 to an intersection with the east boundary (produced) Section 11, thence south along the east [fol. 343] boundary of section 11 a distance of 125.0 feet, more or less to the point of beginning, containing an area of 7.51 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 1, Section 10, Township 27 North Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to, or abutting upon that portion of the Government Meander

line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the boundary line of Section 10 distant 4732.0 feet from the northwest corner thereof, thence southeasterly along a direct line making a southeasterly included angle of 55 degrees 30 minutes a distance of 274.6 feet, thence angle left 7 degrees 2 minutes 180.0 feet, thence angle right 18 degrees 14 minutes 98.0 feet, thence angle left 24 degrees 27 minutes 143.9 feet, thence angle left 12 degrees 55 minutes 96.0 feet, thence angle right 22 degrees 0 minutes 190.0 feet to a point in the east boundary line of section 10, thence north along said east boundary of Section 10 a distance of 55.0 feet, more or less to the northerly boundary of the shore lands; thence northwesterly along the said boundary of the shore lands lying in front of Government Lot 1, to an intersection with the north boundary of Section 10; thence west along said boundary of Section 10 a distance of 60.0 feet more or less to the point of beginning; containing an area of 0.92 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 4 Section 3, Township 27 North, Range 21 E. W. M., together with all shore lands of the second class situated in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the south boundary line of section 3 distant 4732.0 feet from the southeast corner thereof, thence northwesterly along a direct line making a northwesterly included angle of 55 degrees and 30 minutes with said boundary a distance of 97.0 feet, thence angle right 5 degrees 36½ minutes 187.0 feet, thence angle right 2 degrees 6 minutes 87.7 feet, thence angle left 57 degrees 0 minutes 67.6 feet, thence angle right 33 degrees 51 minutes 171.2 feet, thence angle right 0 degrees 33 minutes 72.0 feet; thence angle left 11 degrees 41 minutes 370.2 feet to a point in the west boundary line of lot 4, Section 3, distant 653.0 feet from the southwest corner thereof; thence north along said boundary line of lot 4 a distance of 50.0 feet more or less to the northerly boundary of the shore lands, thence southeasterly along the said boundary of the shore lands lying in front of Government Lot 4 to an intersection with the south boundary of Section

3, thence west along said boundary a distance of 60.0 feet more or less, to the point of beginning, containing an area of 98 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lots 1, 2, and 3, of Section 3 Township 27 North Range 21 E. W. M., together with all shore lands of the second class, situate in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property, more particularly described as follows, to-wit: Beginning at a point in the west boundary of Section 3, distant 2198.0 feet north from the southwest corner thereof, thence in a southeasterly direction along a direct line making a south- [fol. 344] easterly included angle of 68 degrees and 51 minutes with said boundary a distance of 308.3 feet, thence angle left 13 degrees 17 minutes 103.2 feet, thence angle right 9 degrees 45 minutes 83.3 feet, thence angle right 35 degrees 18 minutes 121.7 feet, thence angle left 29 degrees 45 minutes 136.2 feet, thence angle left 8 degrees 15½ minutes 232.8 feet, thence angle right 17 degrees 53 minutes 185.5 feet, thence angle right 20 degrees 8 minutes 114.5 feet, thence angle left 18 degrees 42 minutes 116.8 feet, thence angle right 13 degrees 26½ minutes 87.3 feet, thence angle left 20 degrees 15½ minutes 192.0 feet, thence angle left 25 degrees 24½ minutes 311.2 feet, thence angle left 11 degrees 50 minutes 416.1 feet, thence angle right 30 degrees 43 minutes 61.4 feet, thence angle right 33 degrees 15 minutes 178.0 feet thence an*elg* right 1 degree 29 minutes 218.3 feet, thence angle right 1.0 degree 29 minutes 191.8 feet, thence angle right 6 degrees 42½ minutes 174.6 feet, thence angle right 29 degrees 20½ minutes 49.4 feet, thence angle left 28 degrees 44 minutes 88.4 feet, thence angle left 16 degrees 24 minutes 149.3 feet, thence angle right 4 degrees 43½ minutes 53.2 feet, thence angle right 19 degrees 8 minutes 122.4 feet, thence angle left 9 degrees 29 minutes 95.4 feet, thence angle left 6 degrees 10 minutes 133.0 feet, thence angle left 13 degrees 57 minutes 111.9 feet, thence angle right 19 degrees 24 minutes 91.5 feet, thence angle left 43 degrees 30 minutes 151.8 feet, thence angle right 22 degrees 51 minutes 114.8 feet, thence angle right 16 degrees 36½ minutes 89.3 feet, to a point in the east boundary line of Lot 3, Section 3, distant 653.0 feet from the southeast

corner thereof, thence north along said boundary a distance of 50.0 feet, more or less to the northerly boundary of the shore lands, thence westerly along the northerly boundary of the shore lands lying in front of Government Lots 1, 2, and 3, to an intersection with the east boundary line (produced) of Section 4, Township 27 North, Range 21 E. W. M., thence south along said boundary of Section 4 a distance of 117.1 feet more or less to the point of beginning; containing an area of 8.82 acres, more or less, situated in Chelan County, State of Washington.

All that part of Government Lot 5 and 6 Section 4, Township 27 North Range 21 E. W. M., together with all shore lands of the second class situate in front of, adjacent to or abutting upon that portion of the Government Meander line lying in front of the above described property more particularly described as follows, to-wit: Beginning at a point in the east boundary of Section 4, Township 27 North Range 21 E. W. M., distant 2198.0 feet north from the southeast corner thereof, thence northwesterly along a direct line making a northwesterly included angle of 68 degrees and 51 minutes a distance of 3.3 feet, thence angle left 5 degrees 23 minutes 208.9 feet, thence angle right 20 degrees 44 minutes 83.3 feet, thence angle right 26 degrees 52 minutes 99.2 feet, thence angle right 31 degrees 19 minutes 134.4 feet thence angle right 9 degrees 36 minutes 231.2 feet, thence angle left 17 degrees 31 minutes 124.7 feet, thence angle right 25 degrees 43 minutes 108.2 feet, thence angle left 25 degrees 50 minutes 129.8 feet, thence angle right 11 degrees 8½ minutes 83.3 feet, thence angle left 11 degrees 50 minutes 69.0 feet, thence angle left 30 degrees 8 minutes 176.0 feet, thence angle left 8 degrees 3 minutes 77.0 feet, thence angle right 19 degrees 50 minutes 133.8 feet, thence angle right 24 degrees 21 minutes 114.9 feet, thence angle left 21 degrees 57 minutes 144.0 feet, thence angle left 5 degrees 51 minutes 96.0 feet, thence angle right 18 degrees 37 minutes 50.1 feet, to a point in the north boundary of Government Lot 5, Section 4, distant 550.2 feet from the northwest corner thereof, thence easterly along said boundary a distance of 355.0 feet more or less [fol. 345] to the easterly boundary of the shore lands, thence southerly along the easterly boundary of the shore lands lying in front of Government Lots 5 and 6, to an intersec-

tion with the easterly boundary (produced) Section 4 Township 27 North Range 21 E. W. M., thence south along said boundary of Section 4 a distance of 117.0 feet more or less to the point of beginning; containing an area of 5.92 acres, more or less, situated in Chelan County, State of Washington.

And it is further ordered, adjudged and decreed, that the Chelan Electric Company be and it hereby is released from any and all liability for any and all damages to the lands and property above described, and to any and all pumps, docks, and other property in any manner arising from or to grow out of the impounding and storing of the waters of said Lake Chelan and the Chelan River, and raising the same to the maximum elevation of 1,100 feet still water measurement, above mean sea level, and the said Chelan Electric Company be and it is hereby granted the immediate right of possession of said property to which decree respondent Wick excepts which exception is allowed.

Done in open court this 9th day of July, 1927.

W. O. Parr, Judge.

Received copy of above decree this 9th day of July, 1927.
A. N. Corbin, Attorney for Respondent Alice Barbee Wick.

Written on back: Index I. Recorded W. Compared W. & B. Fee 5.25. Filed for record Jul. 21, P. M. 3:44, 1927. Charles S. Albert. Decree. Book 201, Page 106. Chelan County Auditor, Wenatchee, Wash. I. G.

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[fol. 346] In Superior Court of Chelan County

[Title omitted]

Notice of Appeal—Filed Aug. 2, 1927

To Chelan Electric Company, a corporation, and to Chelan County, a municipal corporation, respondent; and to Messrs. Post & Russel, Charles S. Albert, Edwin C. Matthias, and J. A. Adams, their attorneys:

You and each of you will please take notice and are hereby notified that the above named respondent, Alice

Barbee Wick, appearing specially and not waiving but still retaining her special appearance and objecting to the jurisdiction of the court over her, or her property both on the ground of defective service of process or notice and on the further ground of loss of jurisdiction by reason of the respondent's Petition for Removal to the District Court of the United States, appeals to the Supreme Court of the State of Washington from the Judgment made and entered in the above entitled proceeding on the 9th day of July, 1927, and from the whole thereof and each and every part thereof.

Adrien W. Vollmer, Attorney for Respondent Wick.

Copy of above notice received and due service thereof acknowledged this 30th day of July, 1927.

Post & Russel, Charles S. Albert, Edwin C. Matthias, Attorneys for Petitioner. J. A. Adams, by S. M. D., Atty. for Respondent Chelan County.

[File endorsement omitted.]

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[fol. 347] In Supreme Court of Washington, Department One, September 1, 1927

No. 20635

The State of Washington, on the Relation of Leonard J. Woodruff et al., Plaintiffs,

v.

The Superior Court for Chelan County et al., Respondents

Opinion

The Chelan Electric Company, a public service corporation, commenced a number of actions in the superior court of Chelan county to obtain the right to overflow the lands of various owners to an elevation of eleven hundred feet above mean sea level, for the purpose of creating a reservoir in Lake Chelan for the storage of water to be used

[fol. 347a] in the manufacture of electric energy for public use. By order of the trial court, sixteen cases were consolidated for the purpose of the hearing on the question of public use and necessity, but provided in the order for a separate trial of each case upon the question of damages. Upon the hearing, the court made and entered findings of fact, conclusions of law and an order of public use and necessity in the consolidated cases. Certain of the property owners, namely, Leonard J. Woodruff and wife, James P. Flick and wife, Alice Barbee Wick, Schuyler J. Gray and wife in two cases, Richard H. Lord, and Edith Merritt, have jointly obtained a writ of certiorari to review the order of the superior court. The cases relate to the enterprise that was involved in State ex rel. Chelan Electric Co. v. Superior Court, 42 Wash. Dec. 177, 253 Pac. 115, which case is commonly spoken of as the Getty case.

By their several and separate briefs and arguments, the relators here have presented assignments, some of which are common to all of the relators, others not so. They will be discussed and considered as common to all, unless specified as applying to an individual case. It is claimed that the use contemplated in this case is not a public one, because the Chelan Electric Company has no transmision line nor any customer except the Washington Water Power Company which owns practically all of the stock of the Chelan Electric Company. That situation was explained in the Getty case. The Washington Water Power Company is a public service corporation of this state and is handling the enterprise in the name of the other corporation which was organized for similar public purposes. So far as this point is concerned, there is no question about the public use to which the property will be put.

Further, it is said that the use is a private one and that there is no right or power of eminent domain, because the electric energy produced at the Lake Chelan plant will be used in Idaho. The same contention was made in the Getty case, wherein we did not find it necessary to decide whether that, if true, would defeat the right of eminent domain, because of a finding in that case to the effect that such electric energy would not be used in the state of Idaho, and said in that case that the record, as we understood it, did not lead to a different view from that of the trial court.

Admitting the record and conclusion in that case, relators [fol. 347b] now say that the proof is different in the present case, that they have now furnished additional evidence in support of their claim. But, so has the condemner introduced evidence additional to that it relied on in the other case, and upon all of it, conflicting as it is, the trial court has again found that none of the energy so produced will flow into Idaho. And again we must say, as in the Getty case, "an examination of the record does not lead to a different conclusion." The question involved is one of fact and in reaching our conclusion, as we examine and study the testimony, we bear in mind, of course, the opinion of the trial judge, who had the advantage of observing the appearance of the witnesses and their manner of testifying. This, according to our general rule.

It is assigned that the property in each case is not described with reasonable certainty and that, therefore, the trial court obtained no jurisdiction. The descriptions are long and need not be set out in this opinion. An examination of them, however, satisfies us that they are sufficient to satisfy all question of jurisdiction, as the same affects the rights of resident owners upon whom personal service was had, or the rights of any nonresident owner upon whom service was had by publication of notice. In substance, the descriptions are like the one held to be sufficient in the Getty case.

[1] In this connection, it is further claimed that the court erred in denying motions to make the petitions more definite and certain. It appears, however, that, with such motions, the relators filed motions for bills of particulars for the same purpose and that the order denying the first motions granted the second ones, which have been complied with by the petitioner by the giving of minute detailed descriptions by metes and bounds in each and all of the cases of the lands to be flooded.

[2] At least some of the lands to be flooded are traversed at the present time by a county road. The technical objection is made that no mention was made, or description of the county road given, in the descriptions furnished of relators' properties, and, as we understand some of the arguments, that the rights of the public in the county road

cannot be condemned or taken away. The county, which has supervision and control over its highways, is a party [fol. 347c] to these suits and, whether or not the highway was described in the petition in the present cases, it does clearly appear that, in another case, the petitioner is proceeding against the county to acquire its interest in the highway and that, for that purpose and upon due and regular statutory proceedings, the county agreeably is proceeding to vacate the present highway and establish another one to take its place.

[3] It is assigned that the court erred in consolidating these cases for one hearing. That matter was within the discretion of the court. The order to that effect saved to each of the relators the right to a separate trial on the question of damages.

[4] The relator Alice Barbee Wick is, and was, a resident of Philadelphia, Pennsylvania, and error is assigned on her behalf to the effect that the county of Chelan was improperly made a joint defendant with her, having the effect it is claimed of depriving her of the right to a removal of her case to the federal court on account of diverse citizenship. Two answers may be made: First, at the time the action was commenced general taxes due the county were outstanding and a lien upon the property, and Rem. Comp. Stat., § 921 [P. C. §7646], requires a petition in eminent domain cases to set forth the name of each and every owner, encumbrancer or other person or party interested in the property, and Rem. Comp. Stat., § 922 [P. C. § 7647], requires that a notice of such petition be served on each and every such person; and second, the record shows that, prior to the hearing herein by the trial court, relator Wick did remove the case against her to the federal court and, upon a hearing therein, that court promptly remanded the cause to the state court, from which order of the federal court it appears no appeal was prosecuted nor review sought or had.

[5] Another assignment of error on behalf of Miss Wick is that due process of law is not afforded nonresident land owners by § 2, Laws of 1890, p. 295; Rem. Comp. Stat., § 922. That section provides:

"A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place when and where the same will be presented to the court, or the judge thereof, shall be served. * * * In all cases where the owner or person claiming an interest [fol. 347d] in such real or other property, is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry, his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated, once a week for two successive weeks; * * *"

The return day, or the day fixed for the hearing in this case, was October 11, 1926. The notice of the hearing, which was filed on September 22, 1926, so stated. It was published September 23, September 30 and October 7, 1926, three weekly publications with eighteen days between the date of the first publication and the return day. On October 8, 1926, three days before the return day, Miss Wick by her attorney, who was also a resident of Philadelphia, Pennsylvania, by special appearance (which has been preserved) filed a motion to quash the notice and service. Other than the matter of the description of the property, hereinbefore discussed, the argument is that the two weeks' publication of notice provided for by statute is unreasonably short to constitute due process of law. A great number of authorities are cited by each side upon this important point. They have been examined, but we do not find it necessary or practical to cite or discuss all of them. Counsel for the relator has called attention to authorities deciding the number of publications and intervening time necessary to satisfy a statute requiring publication for a given number of successive weeks. But that is not the question here where, under the statute requiring publication once a week for two successive weeks, the fact is that notice was so published for three successive weeks. The real question here is that of reasonable notice to a non-

resident and opportunity to be heard. The case nearest in point cited, quoted from and apparently relied on by this relator, is Roller v. Holly, 176 U. S. 398, 44 Law Ed. 520. In that case, it was held that a nonresident defendant who was called upon to answer a suit pending in Texas, while he himself was in Virginia, within five days of date of service of citation, was not furnished due process of law. That is, the time under the circumstances was unreasonably short. But we may, and of course do, agree with that [fol. 347e] case and still it does not lead to the striking down of our statute that is complained of, nor to a holding that the notice in the present case was ureasonably short. Counsel argues, as we understand, that, because our statute speaks of two weekly publications, it means eight days' notice and that that length of time, under the circumstances in this case, does not furnish due process of law under the doctrine of the Roller case. That case speaks of the date of service with relation to the return day. Our statute says nothing whatever about a return day, but only the number of publications of the notice, where publication must be had. The return day not being regulated by statute, as was the case in Roller v. Holly, supra, it is fixed independently of it, so that the question in this case is, was the eighteen days' notice that was actually given, that is, the time that elapsed from the date of the first publication of the notice and the return day, unreasonably short under the provision of the constitution?

The statute provides for publication in a newspaper in the county where the lands are situated. With reference to the validity and the necessity for indirect notice of proceedings in rem, as applied to lands in proceedings seeking to subject them to public necessity, there is a sensible and practical theory, supported by authority, that the test is whether the publication of notice was such as to create a reasonable presumption that, if the owner is present and taking care of his property, he would receive notice of what is going on and have an opportunity to defend. Ballard v. Hunter, 204 U. S. 241, 51 Law Ed. 461; Bellingham Bay Improvement Co. v. City of New Whatcom, 172 U. S. 314, 43 Law Ed. 460; Huling v. Kaw Valley R. & Imp. Co., 130 U. S. 559; Windsor v. McVeigh, 93 U. S. 274, 23 Law

Ed. 914; Great Northern R. Co. v. City of Minneapolis, 136 Minn. 1, 161 N. W. 231.

As stated by counsel for the respondent, notwithstanding the contention of relator that eighteen days was not enough time, it happened that the relator did employ a lawyer residing in Philadelphia to come out and put in an appearance for her, doing so three days before the return day, and then, by the liberal, if not slow, process supervised and controlled by the trial court, had more than five months to prepare her defense before the hearing actually took place. [fols. 347f & 347½] As said in 2 Laws Eminent Domain (3rd ed.), § 568, p. 1102, in respect to the manner or time of posting or publishing notice in order to satisfy the requirements of the constitution, "no definite rule is laid down by the authorities." In our opinion, the statute in question is a valid one, and the notice in this case did provide and give reasonable time and opportunity to be heard.

Affirmed.

Mitchell, J.

Mackintosh, C. J., Main, French, and Fullerton, JJ., concur.

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[fol. 348] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING REHEARING—Filed Oct. 13, 1927

The court having considered the petition of the relator Alice Barbee Wick for a rehearing herein;

It is ordered that the said petition be and it hereby is denied.

Dated this 13th day of October, 1927.

By the Court:

Mackintosh, Chief Justice.

[File endorsement omitted.]

[fol. 348½] In Supreme Court of Washington

No. 21274

Chelan Electric Co., Respondent,

vs.

Alice Barbee Wick, Appellant; Chelan County, Defendant

Judgment—Sept. 4, 1928

This cause having been heretofore submitted to the Court upon the transcript of the record of the Superior Court of Chelan County and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, it is now, on this 4th day of September, A. D. 1928, on motion of Post & Russell, Chas. S. Albert & E. C. Matthias, of counsel for respondent, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is hereby, affirmed, with costs, and that the said Chelan Electric Co. have and recover of and from the said Alice Barbee Wick the costs of this action, taxed and allowed at one hundred & sixty-eight & 75/100 dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said Superior Court for further proceedings in accordance herewith.

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[fols. 349-398] In Supreme Court of Washington

No. 20635

State ex Rel. Leonard J. Woodruff et al., Relators,

vs.

Superior Court of Chelan Co. & Chelan Electric Co., Respondents

Judgment—Oct. 13, 1927

This cause having been heretofore submitted to the Court upon the transcript of the record of the Superior Court of

Chelan County and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, it is now, on this 13th day of October, A. D. 1927, on motion of Post & Russell, Chas. S. Albert, & Edwin C. Matthias, of counsel for respondents, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is hereby, affirmed, with costs, the petition for rehearing denied, and that the said Chelan Electric Co. have and recover of and from the said Leonard J. Woodruff et ux., James P. Flick et ux., Alice Barbee Wick et al., Schuyler J. Gray et ux., & Edith Merritt et al., the costs of this action, taxed and allowed at seventy-three & 15/100 dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said Superior Court for further proceedings in accordance herewith.

—— ——, Clerk of the Supreme Court, State of Washington.

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[fol. 399] IN SUPREME COURT OF WASHINGTON

No. 21274

CHELAN ELECTRIC COMPANY, a Corporation, Respondent,

vs.

ALICE BARBEE WICK, Appellant; CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondent Below

ASSIGNMENT OF ERRORS FOR ALICE BARBEE WICK

Now comes Alice Barbee Wick, appellant above-named, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Washington, in the above-entitled cause, there are manifest errors, to the great injury of the said petitioner, Alice Barbee Wick, in the following particulars, to-wit:

I

The Supreme Court of the State of Washington erred in refusing to hold that the Petition and published Notice of

Condemnation in the Superior Court of Chelan County did not contain a sufficient description of the part of the land to be taken, nor the extent of the title sought, and thereby failed to comply with the Fourteenth Amendment of the Constitution of the United States.

II

The Supreme Court of the State of Washington erred in refusing to hold that the Superior Court of Chelan County erred in refusing appellant's motion "to vacate, quash and set aside pretended notice of filing and of hearing" of the petition in condemnation; said motion being upon the [fol. 400] ground, inter alia, that the Condemnation Statutes of the State of Washington, upon which condemnation was based, particularly that portion thereof (Session Laws 1890, p. 295, sec. 2, Remington's Comp. Stat. 922) relating to notice and service upon non-resident owners is inadequate as to manner and time, preventing removal to a federal court, and is thus and otherwise contrary to Paragraph 1, Section 2, of Article III of the Constitution of the United States and the Fourteenth Amendment thereto.

III

The Supreme Court of the State of Washington erred in refusing to hold that the Superior Court of Chelan County erred in refusing appellant's motion to have the Petition set forth more clearly by metes and bounds the land to be overflowed or affected, and the title thereto, or to furnish a bill of particulars, setting out said information, said motion being made on the express ground that such information was necessary to show, and would have shown, a case removable to the federal court, whereby she was deprived of her right of removal, contrary to Paragraph 1, Section 2, Article III of the Constitution of the United States, and also of her rights secured by Section 1 of the Fourteenth Amendment to said Constitution.

IV

The Supreme Court of the State of Washington erred in refusing to hold that the Superior Court of Chelan County

erred in holding that said County was a necessary party to the condemnation proceedings against appellant, because said County had a lien for taxes assessed and levied but not yet due and payable, and erred in refusing appellant's petition for removal to the federal court, contrary to Section 2, Article III of the Constitution of the United States.

V

The Supreme Court of the State of Washington erred in [fol. 401] holding that Chelan County was a proper party respondent, thereby depriving appellant of her right of removal to the federal court.

VI

The Supreme Court of the State of Washington erred in holding that the Revenue (tax) Laws of the State of Washington, particularly Acts approved Mar. 15, 1893, Chap. cxxiv, p. 323, etc. particularly sec. 79 p. 358, sec. 88 p. 361; March 23, 1895, Chap. clxxvi p. 508, etc. particularly sec. 19 p. 516, sec. 21 p. 520; March 15, 1897, Chap. lxxi p. 136 etc. particularly sec. 78, p. 174, sec. 83 p. 176; March 9, 1903, Chap. 59 p. 73, particularly sec. 3, p. 74; providing that taxes assessed and levied but not yet payable are a lien on the real estate on which they are assessed and levied before the time they are allowed to be paid, or could be paid, are not in conflict with Article III, Section 2, paragraph 1, of the Constitution of the United States.

VII

The Supreme Court of the State of Washington erred in refusing to hold the following Statutes of the State of Washington void, as depriving appellant of due process of law secured by the Fourteenth Amendment of the Constitution of the United States, to-wit: Acts approved March 13, 1899, Chap. 94, p. 147 particularly sec. 1, p. 147; March 17, 1903, Chap. 173, p. 360, particularly sec. 2, p. 362; March 15, 1907, Chap. 159, p. 349, particularly sec. 1, p. 349.

VIII

The Supreme Court of the State of Washington erred in refusing to hold that certain Eminent Domain Statutes

of the State of Washington, approved as follows: February 1, 1886, Chap. xxx p. 58, etc. particularly sec. 2, amended by act approved March 21, 1890, (Chap. IX—Corporations) p. 294, etc., entitled "Appropriation of Lands by Corporations—To regulate proceedings for;" February 25, 1891, Chap. xlvi p. 84, etc.; February 19, 1895, Chap. xlvii p. 80, etc.; March 9, 1897, Chap. xlvi, p. 63, etc.; March 15, 1907, Chap. 159, p. 349 etc.; February 8, 1927, Chap. 88, p. 68, [fol. 402] etc.; March 7, 1927 (Laws 1927) Chap. 202 p. 290 etc.; March 19, 1927, (Laws 1927) Chap. 219 p. 337 etc., are contrary to Section 2, Article III, and Section 2, Article VI, and the Fourteenth Amendment of the Constitution of the United States.

IX

The Supreme Court of the State of Washington erred in refusing to hold that the Chelan Electric Company was attempting to condemn for a private use and not for a public use, contrary to appellant's rights under the Fourteenth Amendment of the Constitution of the United States.

X

The Supreme Court of the State of Washington erred in refusing to hold that the Superior Court of Chelan County erred in entering an order of consolidation of several condemnation suits against different property owners, whereby appellant was denied the right to remove her cause to the federal court, in accordance with Article III Section 2, of the Constitution of the United States.

XI

The Supreme Court of the State of Washington erred in not holding that by the proceeding of condemnation the appellant was improperly deprived of her right to have the cause removed to a federal court.

XII

The Supreme Court of the State of Washington erred in refusing to find that the Superior Court of Chelan County had erred in permitting the Chelan Electric Company to

file its Bill of Particulars after the motion for a bill of particulars had been denied, and after the Order of Public Use and Necessity had been entered.

XIII

The Supreme Court of the State of Washington erred in confirming the judgment or decree of the Superior Court of Chelan County because the extent of the land condemned [fol. 403] was in excess of that authorized by the Federal Power Commission.

XIV

The Supreme Court of the State of Washington erred in refusing to hold that the Superior Court of Chelan County erred in instructing the jury that the petitioner in condemnation was seeking only an easement in the land, whereas the Petition and Notice set out that full title is to be acquired; and in instructing the jury that appellant "will retain all rights and privileges incident to the ownership of real property not inconsistent with the right of the petitioner."

XV

The Supreme Court of the State of Washington erred in refusing to find that the Instructions granted by the Superior Court of Chelan County were argumentative and conflicting, and in refusing to hold that the said Superior Court should have granted the Instructions prayed by appellant.

XVI

The Supreme Court of the State of Washington erred in refusing to hold that the judgment, order of public use and necessity and decree of appropriation entered by the Superior Court of Chelan County containing different descriptions of the property taken than that contained in the published Notice and Petition, deprived the appellant of due process of law, secured by the Fourteenth Amendment of the Constitution of the United States.

XVII

The Supreme Court of the State of Washington erred in not holding that the decree of appropriation, permitting

the condemnor to enter into possession pending an appeal, was in violation of the rights of appellant, under Section 2, of Article III of the Constitution of the United States and under the Fifth and Fourteenth Amendments thereto.

[fol. 404] XVII

The Supreme Court of the State of Washington erred in affirming the judgment of the Superior Court of Chelan County.

For which errors, the appellant, Alice Barbee Wick, prays that the judgment of the Supreme Court of the State of Washington, dated September Fourth, 1928, in the above-entitled cause be reversed, and a judgment rendered in favor of the said appellant, and for costs.

Alice Barbee Wick, Alice Barbee Wick, per A. W. V. Adrien Winston Vollmer, Adrien Winston Vollmer, Attorney for Petitioner Alice Barbee Wick.

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[fol. 405] In Supreme Court of Washington

No. 21274

[Title omitted]

Order Allowing Appeal

Upon consideration of the annexed Petition for Appeal to the Supreme Court of the United States, of Alice Barbee Wick, unmarried, and upon examination of the Petition and record, and desiring to give said petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter, and it appearing that all other persons or parties who might have an interest in the same have been duly notified of the intention to apply for the allowance of said appeal, and have failed or refused to join in the same,

It is hereby ordered, That for the purpose of prosecuting an appeal to the Supreme Court of the United States from the final judgment and decree made and entered in the above-entitled cause, the above-named Alice Barbee Wick

be and she hereby is granted a severance from all other persons or parties whatsoever who may have been joined with her in any part of the proceedings had in the above-entitled cause.

And, because in the record, proceedings and judgment in the highest court of this State in which a decision in the case could be had between the Chelan Electric Company, a [fols. 406-410] corporation, respondent, and Alice Barbee Wick, appellant, and Chelan County, Washington, a municipal corporation, respondent below, and wherein was drawn in question the validity of a statute of a state on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of its validity, it appears that the said Alice Barbee Wick is entitled to have the judgment reviewed by the Supreme Court of the United States, and has presented a Petition for Appeal and an Assignment of Errors to that end.

It is further ordered, That the Petition for Appeal be and the same hereby is allowed, and that a certified transcript of the record, proceedings and judgment aforesaid, with all things concerning the same be transmitted to the Supreme Court of the United States at Washington, in the District of Columbia, within sixty (60) days from the date hereof, so that the said Supreme Court may examine and consider the same and may cause further to be done to correct the errors therein, if any hath occurred, what of right and according to the laws and customs of the United States should be done.

And it is further ordered, That a bond on appeal be fixed in the sum of five hundred dollars ($500.00), conditioned as the law directs.

Dated Olympia, Washington, this 8th day of October, A. D. 1928.

Mark A. Fullerton, Chief Justice of the State of Washington.

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[fols. 411-417] Bond on appeal for $500.00, approved and filed October 20, 1928, omitted in printing.

[fol. 418] PETITIONER'S EXHIBIT 27

I, O. C. Merrill, Executive Secretary of the Federal Power Commission, do hereby certify that the following is a true and correct copy from the record of the proceedings of the Commission in my custody of that portion of the minutes of the seventy-eighth meeting of the Commission, held on the 26th day of March, 1926; which refers to the action of the Commission on the Application of the Chelan Electric Company for a license (project No. 637):

"In the matter of the application of Chelan Electric Company of Seattle, Washington, (project No. 637), for a license for a power project on Chelan River and on lands of the United States partly within the Chelan National Forest, in Chelan County, Washington; said company having submitted satisfactory evidence of its compliance with the laws of the State of Washington, as required by Section 9, subdivision (b) of the Federal water power act and of its ability to carry out its plans; notice of said application having been given and published as required by Section 4 of said act, full opportunity having been given for all interested parties to be heard, and no application for said project or in conflict therewith having been filed by any state or municipality; and the maps, plans and specifications of the proposed projects works having been approved by the commission; the Commission thereupon found that said project will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of water-power development and of other beneficial public uses, and that the license will not interfere or be inconsistent with the purpose for which any reservation affected thereby was created or acquired, and in pursuance of such finding authorized issuance of license for a period of fifty (50) years, subject to the provisions of said act, to the rules and regulations of the Commission pursuant thereto, and to the following special conditions, and to such further conditions, if any, as the Secretary of Agriculture shall deem necessary for the adequate protection and utilization of said Chelan Na-

[fol. 419] tional Forest;

"(a) That the license shall at no time cause or permit the elevation of the surface of Chelan Lake to be raised above

elevation 1,100 or to be drawn below elevation 1,079 feet; and unless otherwise specifically authorized by the Commission the draft of water from said lake by the licensee shall not exceed in any year an average of 1,000 cubic feet per second during the period April 1 to August 15 unless or until the surface of said lake is at or above 1,096, and such draft shall during the period August 16 to September 15 of every year be limited to an amount which will not cause the elevation of the surface of said lake to be drawn below elevation 1092; provided,

That if any year under the restrictions herein named the surface of said lake does not reach elevation 1096 by August 1, said date shall apply in lieu of August 16 as determining the beginning of the period during which the surface of the lake may be drawn down to elevation 1092. Said elevations are in feet above mean sea level, as determined by reference to the United States Geological Survey bench mark, elevation 1091.182, as now located and established on Johnson's Point, near Lakeside, Chelan County, or such other bench mark as may be established by the United States Geological Survey having the same datum. Licensee shall establish such additional bench marks as appear necessary in the judgment of the Commission, or its authorized representative, to permit accurate and convenient determination of said elevation.

"(b) That the amount to be entered upon the fixed capital accounts of said project and reported to the Commission as representing the actual legitimate cost thereof and the actual legitimate investment therein up to the date of the license, whether consisting of expenditures actually made, of charges accrued, or of liabilities or obligations incurred, [fol. 420] shall be determined by the Commission in accordance with the provisions of the act and of the regulations established thereunder.

"It was further voted that the Commission declares it to be its purpose to exercise jurisdiction over any securities hereafter issued or assumed by the licensee to the extent authorized under the provisions of section 19 and/or 20 of the act; and the licensee shall not hereafter sell, pledge, repledge, or otherwise dispose of any of its own securities or assume any obligations or liability as guarantor, endorser,

surety or otherwise, in respect of the securities of any other person, natural or artificial, unless and until authorized by the Commission so to do."

Witness my hand and the seal of the Federal Power Commission at Washington, D. C., this 9th day of April, 1926.

O. C. Merrill, Executive Secretary. (Seal.)

[fol. 421] THE FEDERAL POWER COMMISSION

License on Government Lands

Project No. 637

Washington

Chelan Electric Company

Whereas, by Act of Congress, Approved June 10, 1920 (41 Stat., 1063) designated therein as "The Federal Water Power Act" and hereinafter called "The Act," the Federal Power Commission, hereinafter called "The Commission," is authorized and empowered, inter alia, to issue licenses for the purpose of constructing operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development, transmission and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories) or for the purpose of utilizing the surplus water or water power from any Government dam; and

Whereas, Chelan Electric Company, hereinafter called "The Licensee," a corporation organized and existing under the laws of the State of Washington and having its offices and principal place of business in the City of Seattle, in the State of Washington, has made application in due and proper form to the Commission for a license for a power project designated as Project No. 637 on the records of the Commission, and for authority to construct, maintain and operate, at Chelan Lake, in the vicinity of Wenatchee, in the County of Chelan, State of Washington, certain project works, as hereinafter described, necessary or convenient

[fol. 422] for the development, transmission and utilization of power, and to occupy and use therefor certain lands of the United States, as hereinafter described together with all riparian rights appurtenant thereto which are necessary or useful for the purpose of the project; and

Whereas, the Licensee has submitted to the Commission satisfactory evidence of its compliance with the laws of the State of Washington as required by Section 9 subsection (b) of the Act, and the Commission is satisfied as to the ability of the licensee to carry out the plans for said project as filed with said application; and

Whereas, notice of said application has been given and published by the Commission, as required by section 4 of the Act, full opportunity has been given to all interested parties to be heard, and no application for said project, or in conflict therewith, has been filed by any State or municipality; and

Whereas, the maps, plans and specifications of said project and of said project works as hereinafter described, have been approved by the Commission, and the Commission has found that said project, as hereinafter described, will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of waterpower development and of other beneficial public uses, and that the license will not interfere or be inconsistent with the purpose for which any reservation affected thereby was created or acquired; and

Whereas, the Licensee, on the 17th day of April, 1926, pursuant to an authorization of its board of directors, a copy of the record thereof being hereto attached, accepted in writing all the terms and conditions of the Act and of this license;

[fol. 423] Now, therefore, the Commission hereby issues this license to the Licensee for the purpose of constructing, operating and maintaining upon the lands of the United States hereinafter designated and described, certain project works necessary or convenient for the development, transmission and utilization of power and constituting a part of the project hereinafter described, and of authorizing in connection with and as a part of said project the occupancy and/or use by the licensee of said lands of the United States and of all riparian rights appurtenant thereto which are

necessary or useful for the purposes of the project; said license, including the period thereof, being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto as amended and made effective on the 1st day of April, 1924, as though fully set forth herein, which said rules and regulations are attached hereto and made a part hereof, and being subject also to the following express conditions and limitations, to-wit:

Article 1. This license is issued for a period of fifty (50) years from the date hereof, and in consideration of such license and the benefits and advantages accruing thereunder to the Licensee it is expressly agreed by the Licensee that the entire project, project area and project works as hereinafter designated and described, whether or not upon lands of the United States, shall be subject to all the terms and conditions of this license including the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto and made a part of this license.

Article 2. The project covered by and subject to this license is located in part upon lands of the United States within the Chelan National Forest and consists of—

[fol. 424] A. All lands constituting the project area and inclosed, or the location of which is shown, by the project boundary, and/or interests in such lands necessary or useful for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being shown approximately by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit "K" (in 39 sheets). Each sheet entitled "Chelan project, Map of Project Area" and signed by L. C. Gilman, President, on August 20, 1925.

Exhibit "L" Supplemental Sheet No. 10, entitled "Chelan Project Location & Profile of Conduit Lines," Signed by L. C. Gilman, President.

and which will be more fully and definitely shown and described by field notes and maps to be filed as hereinafter provided.

B. All water rights, reference to which is made in certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit "D" (in 15 typewritten sheets). Statement that the Applicant has complied with the requirements of the laws of the states, counties and municipalities with regard to property and franchises.

Exhibit "E" (in 2 typewritten sheets). Statement regarding water rights obtained from the State of Washington.

C. All project works consisting of a dam and head gates in River at the outlet of Lake Chelan; two conduits, principally tunnel, leading from the dam to a power house located near the confluence of Chelan and Columbia Rivers, the location, nature and character of which projects works are more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit "L" (in 8 sheets). All signed by L. C. Gilman, President, on August 20, 1925, the titles to which are:
[fol. 425] Sheet 1. "Chelan Project Diversion and Control Dam."

Sheet 2. "Chelan Project Conduit Line No. 1—River Crossing."

Sheet 3. "Chelan Project Conduit Line No. 2—River Crossing."

Sheet 4. "Chelan Project Surge Tank, Penstock & Power House—Plan and Elevation."

Sheet 5. "Chelan Project Power House—Front Elevation."

Sheet 6. "Chelan Project Power House—End Elevation and Cross Section."

Sheet 7. "Chelan Project Power House—Section Plan."

Sheet 8. "Chelan Project Switching Station—Plan and Elevation.

Exhibit "L." Supplemental Sheet No. 9, entitled "Chelan Project Diversion & Control Dam Location" signed by L. C. Gilman, President.

Exhibit "M" (in 9 typewritten sheets). General Description and Specifications of equipment.

D. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project, whether owned by the Licensee or by the United States, and located upon the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project works is approved or acquiesced in by the Commission; also all other rights, easements or interests, including said riparian rights, the ownership, use, occupancy or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

Article 3. The maps, plans, specifications and statements designated and described in Article 2 hereof as Exhibits D, E, K, L and M, respectively and approved by the Executive Secretary for the Commission in accordance with its authorization of March 26, 1926, are hereby made a part of [fol. 426] this license, and no substantial change shall hereafter be made in said exhibits, or any of them, until such change shall have been approved by the Commission; Provided, however, that if the Licensee deems it necessary or desirable that said approved maps, plans, specifications and statements, or any of them, be changed there shall be submitted to the Commission for approval amended, supplemental or additional maps, plans, specifications and statements covering the proposed changes, and upon approval by the Commission of such proposed changes such amended, supplemental or additional maps, plans, specifications and statements shall become a part of this license and shall supersede, in whole or in part, such map, plan, specification or statement, or part thereof, theretofore made a part of this license as may be specified respectively, in the order or endorsement or approval.

Article 4. Said project works shall be constructed in substantial conformity with the approved maps, plans and specifications thereof made a part of this license and designated and described in Articles 2 and 3 hereof or as changed in accordance with the provisions of said Article 3. Ex-

cept when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project work constructed under this license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission shall direct. Minor changes in or divergencies from such approved maps, plans, and specifications may be made in the course of construction, if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any such minor changes made without the prior approval of the Commission which in its judgment have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

[fol. 427] Article 5. The work of construction under this license, whether or not conducted upon lands of the United States, shall be subject to the inspection and approval of the District Forester, U. S. Forest service, Portland, Oregon, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall notify such representative of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of construction for a period of more than one week, and of its resumption and completion.

Article 6. Subject to the provisions of Section 13 of the Act, the Licensee shall begin the construction of the project works on or before November 1, 1926, shall complete such thereof as are necessary for the generation and delivery of 25,000 H. P. of electric energy on or before November 1, 1928, and shall complete the entire project on or before December 31, 1934.

Article 7. Upon the completion of the project works, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements, in so far as necessary to show any divergence from or variation in

the project area as finally located or in the project works as constructed when compared with the area shown and the works designated or described in this license or in the maps, plans, specifications and statements approved by the Commission under the provisions of Article 3 hereof, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of this license and shall, to the extent and in the particulars set forth in the order [fol. 428] or endorsement of approval, be substituted for the maps, plans, specifications and statements theretofore approved by the Commission under the provisions of Article 3 hereof. The maps finally approved by the Commission and made a part of this license under the provisions of Article 3 and/or 7 hereof shall show the project area to an adequate scale and the boundary thereof either by legal subdivisions, by metes and bounds survey, and by uniform offsets from center-line survey. Said project area shall include all lands without respect to ownership and whether or not the exact boundaries can be definitely fixed and determined, the use and occupancy of which are or will be valuable or serviceable in the maintenance and operation of the project; on which are located or to which are appurtenent the project works (other than portable property) and the rights, easements, or interests likewise valuable and serviceable; and the ownership or possession, or the right of use and occupancy, of which are subject to acquisition by the United States under the provisions of Section 14 of the Act. Said maps shall show the ownership of each parcel of land in said project area, and with respect to each parcel to which the licensee has not the fee title, the character of the right of use and occupancy possessed by the Licensee together with the term of such right.

Article 8. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of said project works and of the amount of water held in and drawn from storage, the Licensee shall install and thereafter maintain a standard gage or gages as may be necessary to determine and record

the variations of the level of Chelan Lake, and the rates and volume of the discharge of water therefrom, and shall provide for the required readings of such gages and for the adequate rating of the station or stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters or other measuring devices, and the method of operation thereof may be [fol. 429] altered from time to time if necessary to secure adequate determinations, but such alterations shall not be made except with the approval of the Commission or its authorized representative or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of the District Engineer of the U. S. Geological Survey having charge of stream gaging operations in the region of said project, and the Licensee shall reimburse the said United States Geological Survey for costs incurred in such supervision or for such part thereof as said District Engineer may deem equitable in the circumstances. The Licensee shall keep accurate and sufficient record of the foregoing determination to the satisfaction of the Commission, shall make return of such records annually, at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall be liable for all damages occasioned to the property of others by the construction, maintenance or operation of said project works, or of the works appurtenant or necessary thereto, and in no event shall the United States be liable therefor.

Article 10. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto constructed under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 11. Timber upon lands of the United States to be used or destroyed in the construction of the project works, shall be paid for in accordance with the requirements and estimates of the Department concerned.

[fol. 430] Article 12. In the construction and maintenance of the project works herein specified, the Licensee shall place and maintain suitable structures to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets or railroads.

Article 13. The Licensee shall at no time cause or permit the elevation of the surface of Chelan Lake to be raised above elevation 1100 or to be drawn below elevation 1079 feet; and unless otherwise specifically authorized by the Commission the draft of water from said lake by the Licensee shall not exceed in any year an average rate of 1000 cubic feet per second during the period April 1 to August 15, unless or until the surface of said lake is at or above elevation 1096, and such draft shall during the period August 16 to September 15 of every year be limited to an amount which will not cause the elevation of the surface of said lake to be drawn below elevation 1092; provided, That if in any year under the restrictions herein named the surface of said lake does not reach elevation 1096 by August 1, said date shall apply in lieu of August 16 as determining the beginning of the period during which the surface of the lake may be drawn down to elevation 1092. Said elevations are in feet above mean sea level, as determined by reference to the United States Geological Survey bench mark, elevation 1091.182, as now located and established on Johnson's Point, near Lakeside, Chelan County, or such other bench marks as may be established by the U. S. Geological Survey having the same datum. Licensee shall establish such additional bench marks as appear necessary in the judgment of the Commission, or [fol. 431] its authorized representative, to permit accurate and convenient determination of said elevation.

Article 14. The Licensee shall clear and keep clear the shores of Chelan Lake to elevation 1100, shall remove to the satisfaction of the Commission or of its authorized representative, all trees, snags, stumps, brush, fallen trees or other debris and all temporary structures, and shall make such disposition of the material removed as the Commission or its authorized representative may direct.

Article 15. It is understood and agreed that the use and occupancy of government lands hereby authorized is limited to that necessary or convenient for the development of power, and that public use of Chelan Lake and its shores for recreational or navigation purposes, in so far as such use will not unreasonably interfere with the development of power, shall not be restricted.

Article 16. In the interests of navigation, the Licensee shall mark or buoy all rocks to be submerged which, in the judgment of the Commission would be hazardous to boats navigating the waters of Chelan Lake, and shall reconstruct or replace any existing pier, dock, or other landing facility as may be necessary to permit its use at all stages of said lake, unless the owner of such pier, dock, or other landing facility shall have been otherwise compensated for any damage done thereto by the alteration of the levels of said lake under the provisions of this license.

Article 17. The Licensee shall, before placing any transmission line into operation, make provision satisfactory to the Commission for avoiding inductive interference between such transmission line and any existing telephone line or lines of the United States, or with any such line or lines for which location has been made and specifications prepared but upon which construction has not begun at the time of the erection of said transmission line. Such provisions may be applied either to the transmission line or to the telephone line or both, as may be determined upon the basis of least cost. The Licensee hereby agrees to assent to such changes in the location or design of any of [fol. 432] its transmission lines as may in the opinion of the Commission be necessary or desirable in order to avoid inductive interference with any telephone line or lines of the United States hereafter constructed or proposed to be constructed, provided such changes are made at the expense of the United States.

Article 18. The Licensee shall permit the use of said Chelan Lake for the temporary storage or for the transportation of logs, ties, poles, lumber, or other forest products, and upon demand of the Secretary of Agriculture, shall construct a logway or logways approved by said Secretary and suitable for the passage of such logs, ties, poles, lumber or other forest products, over or around the dam at the outlet of said Lake without undue hindrance or delay; Provided, That the use of such logway or logways by owners of such logs, ties, poles, lumber, or other forest products, shall be under such rules and regulations adopted by the Licensee as may be approved by the Secretary of Agriculture.

Article 19. The Licensee will interpose no objections to, and will in no way prevent, the use of water for domestic purposes by persons or corporations occupying lands of the United States under permit along or near any stream or body of water, natural or artificial, used by the Licensee, in the operation of the project works covered by this license.

Article 20. The Licensee shall allow officers and employees of the United States free and unrestricted access in, through and across the said project and project works in the performance of their official duties, and shall allow the Forest Service, without charge, to construct or permit to be constructed in, through or across the said project, railroads, chutes, roads, trails, conduits, and other means of transportation not inconsistent with the enjoyment of said project by the Licensee for the purposes herein set forth.

Article 21. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon [fol. 433] request of officers of the Forest Service, or other agents of the United States, to prevent and suppress fires on or near the lands to be occupied under this license.

Article 22. The Licensee hereby agrees as a condition of this license that the amount to be entered upon the fixed capital accounts of said project and reported to the Commission as representing the actual legitimate cost thereof and the actual legitimate investment therein up to the date of this license, whether consisting of expenditures actually

made, of charges accrued, or of liabilities or obligations incurred, shall be determined by the Commission in accordance with the provisions of the Act and of the regulations established thereunder; and it is further agreed by the Licensee that upon completion of the construction of each of the separable parts of said project for which dates of completion are specified in Article 6 hereof or any addition to or betterment of said project the Licensee shall file with the Commission a statement, under oath in duplicate, in such detail as the Commission may require, showing the actual legitimate cost of construction thereof, together with the price paid for water rights, rights of way, lands or interest in lands constituting any part of the project property subject to the provisions of this license, all as specified in regulation 20, section 2, of said rules and regulations. Such statement or statements shall include all proper and legitimate costs, whether incurred prior to the date of this license or on and after such date; and the Licensee shall, if requested by the Commission, show separately on such statement or statements the items and amounts of cost incurred prior to the issuance of this license as determined by the Commission as hereinbefore in this article provided, with such other details with respect to the cost of the project or any part thereof as the Commission may require. Each and every item of cost included in such statement shall be supported by proper voucher or [fol. 434] other record; and any such voucher or record or certified copy thereof, in support of any item properly includible in said cost shall become a part of the permanent records of said project and shall be kept and retained by the Licensee in the manner required by the Commission.

Article 23. Whenever the Licensee is directly benefitted by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other head water improvement, the Licensee shall reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance and depreciation thereon as the Commission may deem equitable. The proportion of such charges to, be paid by the Licensee shall be determined from time to time by the Commission. Whenever such reservoir or other improvement is constructed by

the United States the Licensee shall pay similar charges into the Treasury of the United States upon bills rendered by the Commission.

Article 24. The Licensee shall pay to the United States reasonable annual charges for the purpose of reimbursing the United States for the costs of administration of the Act and for recompensing it for the use, occupancy and enjoyment of its lands or other property hereinbefore described. The payment by the Licensee of such annual charges for any calendar year shall be made to the United States at the end of the year, or within thirty days thereafter, upon bills rendered or approved by the Commission. Such charges shall be determined in accordance with the provisions of Regulation 14 of said rules and regulations of the Commission, and for the purposes of such determination the power capacity shal be taken as 54,000 horse power.

Article 25. After the first twenty years of operation of said project under this license, out of surplus earned thereafter, if any, accumulated in excess of a specified reason-[fol. 435] able rate of return upon the actual, legitimate investment of the Licensee in said project, all as defined in and determined by the provisions of Regulation 17 of said rules and regulations of the Commission, the Licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return shall, subject to the proviso of Paragraph A, Section 3 of said regulation, be one and one-half (1½) times the weighted average annual interest rate payable on the par value of the bona fide interest-bearing debt of the Licensee actually outstanding, in whole or in part, on account of project property at the beginning of the period of amortization and of each calendar year thereafter; such weighted average annual interest rate being determined as provided in Paragraphs B and C of Section 3 of said Regulations 17; Provided, That if at the beginning of the period of amortization or of any calendar year thereafter, the outstanding interest-bearing debt of the Licensee on account of the project or projects under license, together with any other works or property operated in connection therewith,

is less than 25 per cent of the actual, legitimate investment of the Licensee in said project or projects, then and in such event for the calendar year next following the specified rate of return shall be two (2) times the legal rate of interest in the state in which the project or major part thereof is located.

Subject to the provisions of Section 6 of said regulation, the following proportions of such surplus earnings shall be paid into and held in such amortization reserves: Of all surplus earnings up to and including 2 per cent upon the actual, legitimate investment, 30 per cent thereof shall be so paid; of all surplus earnings in excess of 2 per cent and not in excess of 4 per cent upon such investment, 50 per cent thereof shall be so paid; of all surplus earnings in [fol. 436] excess of 4 per cent and not in excess of 6 per cent, 70 per cent thereof shall be so paid, and of all surplus earnings in excess of 6 per cent, 90 per cent thereof shall be so paid; Provided, that if at the end of any calendar year of the amortization period the Commission shall find that the accumulated earnings of the License during the period of operation, including the first twenty (20) years theerof, have not yielded a fair return upon the actual, legitimate investment in the project or projects under license, the proportion of such surplus earnings for such calendar year and for succeeding calendar years to be paid into such amortization reserves shall be ten (10) per cent thereof until such time as the accumulated earnings of the Licensee represent, in the judgment of the Commission, a fair return upon such investment for such period of operation.

Article 26. No lease of said project or part thereof whereby the lessee is granted the exclusive occupancy, possession or use of project works for purposes of generating, transmitting or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of this license, of the Act, and of said rules and regulations of the Commission shall be applicable to such lessee and to such property so leased to the same extent as if the lessee were the Licensee hereunder; Provided, that the provisions of this article shall not apply to parts of the project or project works which

may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for the purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for said purposes.

[fol. 437] Articles 27. It is hereby understood and agreed that the Licensee, its successors and assigns will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned or otherwise disposed of without the approval of the Commission; Provided, That a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The Licensee further agrees, on behalf of itself, its successors and assigns, that, in the event said project is taken over by the United States upon the termination of this license, as provided in Section 14 of the Act, or is transferred to a new Licensee under the provisions of Section 15 of the Act, it will be responsible for and will make good any defect of title to or right of user in any such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge or will assume responsibility for payment and discharge of all liens or incumbrances upon said project or project property created by said Licensee or created or incurred after the issuance of this license; Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacement thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to

require the Licensee for the purpose of transferring the project to the United States or to a new Licensee to acquire any different title or right of user in any such project property than was necessary to acquire for its own purposes as Licensee.

[fol. 438] Articles 28. The Licensee shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged; and in case of the development, transmission, distribution, sale or use of power in public service by the Licensee or by its customers engaged in public service within a state which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by the Licensee or by its customers engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control. The Commission hereby declares it to be its purposes to exercise the jurisdiction over any securities hereafter issued or assumed by the Licensee to the extent authorized under the provisions of Sections 19 and/or 20 of the Act; and the Licensee shall not hereafter sell, pledge, repledge, or otherwise dispose of any of its own securities or assume any obligations or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, unless and until authorized by the Commission so to do; Provided, That the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this Article as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

[fol. 439] Article 29. With the written consent of the Licensee, the Commission may by order made under its

seal, and after the public notice required by Section 6 of the Act, modify, alter, enlarge or omit, in so far as authorized by law, any one or more of the conditions or provisions of this license.

Article 30. The enumeration of any rights reserved to the United States or to any state or municipality under the Act, or of any requirement of the Act or of said rules and regulations of the Commission shall not be construed in any degree as impairing any other rights so reserved by the Act or as limiting the force of any other requirement of said Act or of said regulations.

In witness whereof the Federal Power Commission has caused its name and seal to be hereunto signed and affixed by its Executive Secretary, O. C. Merrill, this 8th day of May, 1926.

Federal Power Commission. (Signed) O. C. Merrill, Executive Secretary. (Seal Federal Power Commission, U. S. A.)

[fols. 440-444] In testimony of acceptance of all the terms and conditions of the Federal Water Power Act of June 10, 1920, and of the further conditions imposed in the foregoing license, the Licensee, this 17th day of April, 1926, has caused its name and corporate seal to be hereto signed and affixed by L. C. Gilman and Thomas Balmer, its President and Asst. Secy., pursuant to a resolution of its board of directors, passed on the 17th day of April, 1926, a certified copy of the record thereof being hereto attached.

Chelan Electric Company, by (Signed) L. C. Gilman, President.

Attest: (Signed) Thomas Balmer, Asst. Secretary.

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[fol. 445] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

OBJECTION TO REMOVAL—Filed June 27, 1927

Comes now the above named respondent, Chelan County, Washington, a municipal corporation, and objects to the

removal of the above entitled action to the District Court of the United States in and for the Eastern District, Northern Division, and states to the Court:

1. That the said United States District Court has no jurisdiction over this controversy nor the parties hereto.

2. That the petition for removal presented at this time to this court was not filed in this court within the time limited by law.

3. That the controversy herein is not one wholly between citizens of different states.

4. That said controversy is not a separable controversy.

5. That no notice of hearing upon the petition for removal has been served upon Chelan County.

6. That said Chelan County is a lienor and encumbrancer upon and has a right, title, interest and estate in the lands, real estate and premises owned by the said Alice Barbee Wick, and sought to be taken in these proceedings.

7. That such Chelan County is specially interested in these proceedings and in the property sought to be taken herein, by reason of the proceedings heretofore taken with reference to said property, and shown by Exhibits 18 and 19 in this action.

8. Upon the ground that the taxes for the year 1926 on [fol. 446] Lots 1, 2, 3, and 4, in Section 3, Township 27 were paid by the Respondent Alice Barbee Wick on March 12, 1927, and the taxes on the property involved in this proceeding in Sections 10 and 11 in Township 27 were also paid on March 12, 1927, and that the time for removing said cause has long since expired.

J. A. Adams, Attorney for Chelan County, Washington.

[fol. 447] IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

vs.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

DOCKET ENTRIES

| | | |
|---|---|---|
| Sep. 17, | '26. | Notice, 4.00. |
| " " | " | Petition. |
| " 22, | " | Sheriff's return. |
| " " | " | Aff. of Service. |
| " " | " | " for Publication. |
| Oct. 4. | '26. | Notice of appearance (County). |
| " 8, | " | Special appearance and motion to quash 2.00. |
| " 11, | " | Order for Continuance. |
| " 30, | " | Aff. of Publication. |
| " 30, | " | Notice of Petition & Bond for removal. |
| " " | " | Petition for Removal to the District Court of the United States. |
| " " | " | Bond on Removal. |
| " " | " | Affidavit. |
| " " | " | Objections to removal to the United States Court. |
| " " | " | Order. |
| " " | " | Proposed order of removal. |
| Nov. 4, | " | Motion to Remand. |
| " " | " | Affidavits and order. |
| " " | " | Order for Continuance. |
| Dec. 6, | " | Order for Continuance. |
| Feb. 7, | '27. | Order for Continuance. |
| " 28, | " | Notice. |
| " " | " | Special appearance and demurrer & Motion to make more definite and certain. |
| " " | " | Order. |

Mar. 1, 1927. Order overruling demurrer.
" " " Order overruling Motion.
" 24, " Notice of Presentation of Order, etc.
" " " Findings and Conclusions.
" " " Order of Public Use & Necessity & Order of Consolidation.
" 24, " Respondent's proposed findings.
" 26, " Notice.
" " " Jury demand, 12.00.
" 28, " Order on Motions to make more definite and certain & for Bill of Particulars.
" " " Exceptions to findings, Conclusions and order of Public use, etc.
Mar. 29, " Exceptions to Findings, Conclusions & Order.
" 30, " Respondent's Proposed Findings (Consolidated cases).
" " " Exceptions to Refusal of Court to sign Proposed Findings & Conclusions (Consolidated).
Apr. 15, " Note of issue.
" " " Aff. of Service.
" 27, " Bill of Particulars.
" 30, " Writ of Certiorari received today.
May 16, " Statement of facts (Filed in #7389) (5-28-27).
[fol. 448]
May 27, '27. Supplemental Transcript (Filed in 7389) (5-28-27).
" " " Statements of Facts (5-28-27).
June 27, 1927. Petition for removal.
" " " Bond on Removal.
" " " Objections to Removal.
" " " Affidavit of Adrien W. Vollmer.
June " " Proposed Order.
" " " Order denying Pet. for Removal.
" 30, " Request for Instructions. (Filed after all had rested.)
" " " Instructions to the Jury.
June 30, 1927. Notice of Presentation.
" " " Judgment on Verdict (Proposed).
" " " Verdict & Ans. to Interrogatories.

July 2, 1927. Motion for New Trial.
" " " Exceptions to Instructions, etc.
" " " Notice.
" " " Notice.
" " " Supporting Affidavit on Motion for New Trial.
" " " Additional Exceptions to Instructions.
" 8, " Cost Bill of Wick.
" 9, " Order striking Aff. of Adrien W. Vollmer, & Denying Motion for New Trial.
" 9, " Judgment on Verdict.
" " " Decree of Appropriation.
July 30, " Notice of appeal.
Aug. 2, " Notice of appeal.
Sep. 1, '27. Transcript on appeal.

[fol. 449-452] The Docket Entries Since Sep. 1, 1927

Sep. 1, 1927. Transcript on appeal.
Oct. 8, " Statement of Facts.
" 17, " Proposed Amendments to Statement of Facts.
" 18, " Remittitur.
Nov. 22, " Notice of Attorney's Lien.
Feb. 15, 1928. Notice.
" 15, " Affidavit of Service.
" 18, " Præcive for Alice B. Wick.
" 20, " Motion for Settlement and Certificate.
" 20, " Objections to Settlement.
" 20, " Order extending time for filing briefs.
" 24, " Letter of Request.
" 24, " Affidavit of Charles S. Albert.
" 25, " Affidavit of John B. Shorett & W. G. McLaren.
Mar. 1, " Affidavit of Service.
" 1, " Decision of Judge Parr.
" 5, " Affidavit.
" 5, " Affidavit of Service.
" 5, " Notice.
" 8, " Exhibits, Transcript & Statement of Facts sent to Supreme Court.

Mar. 14, " Supplemental transcript filed.
" 21, " Appellant's Briefs, Abstract of Record and Supplemental Transcript sent to Supreme Court.
" 30, " Affidavit of Service.
Apr. 5, " Supplemental Transcript sent to Supreme Court.
" 7, " Amended notice of Attorney's Lien.
" 19, " Briefs Received from Mr. Albert and sent to Supreme Court. Supplemental Transcript also sent.
" 20, " The Original Resp. Briefs received from Mr. Albert and sent to Supreme Court.

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[fol. 453] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

OBJECTION TO REMOVAL—Filed June 27, 1927

Comes now the above named respondent, Chelan County, Washington, a municipal corporation, and objects to the removal of the above entitled action to the District Court of the United States in and for the Eastern District of Washington, Northern Division, and states to the court.

1. That the said United States District Court has no jurisdiction over this controversy nor the parties hereto.

2. That the petition for removal presented at this time to this court was not filed in this court within the time limited by law.

3. That the controversy herein is not now wholly between citizens of different states.

4. That said controversy is not a separable controversy.

5. That no notice of hearing upon the petition for removal has been served upon Chelan County.

6. That said Chelan County is a lienor and encumbrancer upon and has a right, title, interest and estate in the lands,

real estate and premises owned by the said Alice Barbee Wick, and sought to be taken in these proceedings.

7. That such Chelan County is specially interested in these proceedings and in the property sought to be taken herein, by reason of the proceedings heretofore taken with reference to said property, and shown by Exhibits 18 and 19 in this action.

[fol. 454] 8. Upon the ground that the taxes for the year 1926 on Lots 1, 2, 3, and 4, Section 3, Township 27 were paid by the Respondent Alice Barbee Wick on March 12, 1927, and the taxes on the property involved in this proceeding in Section 10 and 11 in Township 27 were also paid on March 12, 1927, and that the time for removing said cause has long since expired.

J. A. Adams, Attorney for Chelan County, Washington.

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[fol. 455] In Superior Court of Chelan County

[Title omitted]

Notice of Withdrawal of Attorney—Filed Feb. 28, 1927

To the above-named petitioner and to its attorneys, Messrs. Post & Russell, Charles S. Albert, and Edwin C. Matthias:

You are hereby notified that D. C. Conover, one of the attorneys of record for the respondent Alice Barbee Wick, appearing specially herein, has withdrawn as attorney in said case, and Adrien W. Vollmer, the other attorney, will continue to act as such.

D. C. Conover, Adrien W. Vollmer.

Copy of the foregoing notice of withdrawal received and service accepted this 18th day of February, 1927.

Post & Russell, Charles S. Albert, Edwin C. Matthias.

[File endorsement omitted.]

[fols. 456-512] IN SUPREME COURT OF WASHINGTON

No. 21274

[Title omitted]

NOTE RE ORDER STRIKING STATEMENT OF FACTS

(For Order of the Supreme Court of Washington striking the Statement of Facts see Opinion of Supreme Court.)

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[File endorsement omitted]

[fol. 513] **Addition to Transcript of Record**—Filed in U. S. Supreme Court Feb. 9, 1929

IN SUPERIOR COURT OF CHELAN COUNTY

No. 7391

CHELAN ELECTRIC COMPANY, a Corporation, Petitioner,

vs.

ALICE BARBEE WICK and CHELAN COUNTY, WASHINGTON, a Municipal Corporation, Respondents

SPECIAL APPEARANCE AND MOTION TO QUASH—Filed Oct. 8, 1926

Comes now the above-named respondent Alice Barbee Wick, appearing herein specially for the purpose of this motion only, and objects to the jurisdiction of this court over the person of this respondent and moves the court to vacate, quash and set aside the pretended notice of filing and of hearing of the petition of the above-named petitioner as pretended to be served upon this respondent, for the following reasons and upon the following grounds, to-wit:

1. That the said pretended notice was and is illegally and irregularly issued.

2. That the said pretended notice is not such as prescribed by law.

3. That the said pretended notice has not been served or returned as provided by law.

4. That the statutes of the State of Washington upon which the above-entitled proceeding is based do not provide for sufficient or adequate service of notice in such cases upon nonresident owners of property affected.

5. That said statutes do not provide either for personal service of such notice upon non-residents of the State of Washington or the mailing of a copy of such notice to non-residents as a pre-requisite to the right of publication.

6. That the aforesaid pretended notice in the above-entitled action does not comply in form or substance with the statutes of this state governing these proceedings, and does not constitute due notice.

7. That the effect of the service of the notice provided by the statutes of the State of Washington in this and similar proceedings against interested parties or property owners not residing within the State of Washington, and especially upon those residing in distant states, is to permit the property or property rights of such non-resident owners to be confiscated and taken without due process of law.

8. That the act or statute of the State of Washington upon which the above-entitled proceedings is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the State of Washington and is therefore unconstitutional and void.

[fol. 514] 9. That the act or statute of the State of Washington upon which the above entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the United States and is therefore unconstitutional and void.

10. That the court has no jurisdiction over the person of this respondent.

This motion is based upon the records and files in the above pretended action, and also upon the affidavit of Adrien W. Vollmer hereto attached.

Comes now the above-named respondent, Alice Barbee Wick, appearing herein specially for the purpose of this motion only, and objects to the jurisdiction of this court over the person of this respondent, and further moves the court to vacate, set aside and quash the pretended service of the notice of filing and hearing of petitioners' petition upon this respondent, for the following reasons and upon the following grounds, to-wit:

1. That the said pretended notice was and is illegally and irregularly issued.

2. That the said pretended notice is not such as prescribed by law.

3. That the said pretended notice has not been served or returned as provided by law.

4. That the statutes of the State of Washington upon which the above-entitled proceeding is based do not provide for sufficient or adequate service of notice in such cases upon non-resident owners of property affected.

5. That said statutes do not provide either for personal service of such notice upon non-residents of the State of Washington or the mailing of a copy of such notice to non-residents as a pre-requitite to the right of publication.

6. That the aforesaid pretended notice in the above-entitled action does not comply either in form or substance with the statutes of this state governing these proceedings, and does not constitute due notice.

7. That the effect of the service of the notice provided by the statutes of the State of Washington in this and similar proceedings against interested parties or property owners not residing within the State of Washington, and especially upon those residing in distant states, is to permit the property or property rights of such non-resident owners to be confiscated and taken without due process of law.

8. That the act or statute of the State of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication

upon non-resident owners or interested parties is contrary to the constitution of the State of Washington and is therefore unconstitutional and void.

9. That the act or statute of the State of Washington upon which the above-entitled proceeding is based, and more particularly that part of said act or statute providing for the notice and the service thereof by publication upon non-resident owners or interested parties is contrary to the constitution of the United States, and is therefore uncon-
[fol. 515] stitutional and void.

10. That the court has no jurisdiction over the person of this respondent.

This motion is based upon the records and files in the above pretended action and upon the affidavit of Adrien W. Vollmer hereto attached.

(Signed) D. C. Conover, Adrien W. Vollmer, Attorneys for respondent Alice Barbee Wick, appearing specially. Office and P. O. address: 1489 Dexter Horton Bldg., Seattle, Washington.

Service accepted and copy received this 8th day of Oct. 1926.

E. C. Matthias, Attorney for Petitioner.

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[fol. 516] In Superior Court of Chelan County

Affidavit of Adrien W. Vollmer

State of Washington,
County of Chelan, ss:

Adrien W. Vollmer, being first duly sworn, on oath deposes and says: That he is a resident of the City of Philadelphia, in the State of Pennsylvania, and is a nephew of the above-named respondent, Alice Barbee Wick; that the said Alice Barbee Wick is not a resident of the State of Washington and never has been a resident of the State of Washington, and has not been within the State of Washington for many years last past, and during all of such time has lived in and resided and made her home in the

said City of Philadelphia in the State of Pennsylvania, and at and for some time prior to the filing of the petition in the above-entitled action and the pretended service of the notice of hearing thereof by publication, the agents for the said petitioner knew the address of the said respondent; that the said respondent has never received any notice of the hearing of the above-entitled matter and has not been served with notice of the hearing thereon excepting by the pretended and alleged service by publication of the pretended notice of hearing in the above entitled matter; that this affidavit is made upon the special appearance of the above-named respondent Alice Barbee Wick and in support of her motion to quash the pretended notice and the pretended or alleged service thereof, and for that purpose this affiant specially appears herein on behalf of the said respondent for the purpose of making this affidavit and for no other purpose.

Adrien W. Vollmer.

Subscribed and sworn to before me this October 8th, 1926. Martin H. Easton, Notary Public in and for the State of Washington, residing at Wenatchee. Commission expires June 15, 1927. (N. P. Seal.)

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[fol. 517] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

RESPONDENTS' PROPOSED FINDINGS OF FACT—Filed Mar. 24, 1927

Come now the respondents Leonard J. Woodruff and Jane Doe Woodruff, his wife, James P. Flick and Grace M. Flick, his wife, and Alice Barbee Wick, and propose the following Findings of Fact to be inserted in page three (3) of the Petitioner's proposed Findings of Fact at line six (6) from the bottom of said page:

Thereupon the respondents, Leonard J. Woodruff, and Jane Doe Woodruff, his wife, James P. Flick and Grace M. Flick his wife, and Alice Barbee Wick, moved the court for separate hearings upon the question of public use and necessity, which motions were by the court severally denied and the exceptions of the said severally moving respondents thereto duly noted, whereupon the court ordered that, without waiving the special appearance for the proposed hearing and determination of the questions of public use and necessity and of any appeal or writ of certiorari for the review of the order of this court upon those questions, all of the above numbered causes may be consolidated and treated as one cause, and decided by one order, and that if the question of damages in said causes should hereafter be tried there should be a separate trial and a separate verdict in each of said causes in all respects as though said causes had never been consolidated for any purpose; and thereupon evidence was introduced by the petitioner in support of the allegations of its petitions and by the respondents in opposition thereto, and the court having duly heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, makes the following:

## Conclusions of Law

Come now the respondents, Leonard J. Woodruff and [fol. 518] Jane Doe Woodruff, his wife, James P. Flick and Grace M. Flick, his wife, appearing herein by their attorneys, Shorts & Denney, Wm. A. Grimshaw and O. P. Barrows; and the respondents Alice Barbee Wick, appearing by her attorneys Adrien W. Vollmer, Peters & Powell and Robert H. Evans; and the respondent Katheryne V. Cowen appearing by her attorneys, W. B. Stratton and S. J. Chadwick; and the respondents Schuyler J. Gray and Dora Gray, his wife, by their attorneys Shorts & Denney, Wm. A. Grimshaw and O. P. Barrows; and the respondent, Etheldia Burge, appearing by her attorneys Shorts & Denney, Wm. A. Grimshaw and O. P. Barrows; and the respondent Richard H. Lord appearing by his attorneys Shorts & Denney, Wm. A. Grimshaw and O. P. Barrows; and proposes Conclusions of law herein as follows:

I

That the public interest does not require the prosecution of the enterprise of the petitioner, and that the land, real estate premises and other property sought to be appropriated in the respective causes are not required and not necessary for the purpose of said enterprise.

Without waiving the foregoing proposed Conclusion of Law, but in the event the same be denied and in the event the conclusions of law proposed by the petitioner be made and adopted by the court, the said respondents, without approving or asking that such petitioner's proposed Conclusions of Law be adopted, do move the court that such conclusions of law, if made, be amended to read as follows:

I

"That the public interest requires the prosecution of the enterprise of the petitioner for use only within the State of Washington."

II

"And that the land, real estate, premises and other property sought to be appropriated in the respective causes are [fol. 519] necessary for the purpose of the said enterprise for use only within the State of Washington.

III

The said respondents object to paragraph 2 of the proposed order and decree of the necessity of public use submitted by the petitioner and to the whole thereof, and each and every part thereof, and without waiving such objection, but in the event such objection be overruled by the court and that the said paragraph 2 of the petitioner's proposed order and decree of public use and necessity be adopted by the court, the said respondents move the court to insert in such proposed paragraph 2 the following:

a. In the first line thereof after the words "That the contemplated use" insert "only within the State of Washington," and in the thirteenth line thereof, after the words

"for its corporate purposes" insert "for use only within the State of Washington."

O. P. Barrows, Shorts & Denney, Wm. A. Grimshaw, Adrien W. Vollmer, Peters & Powell and Robert H. Evans, W. B. Stratton and S. J. Chadwick, Attorneys for said Respondents.

Service accepted and copy received this 23rd day of March, 1927.

Post & Russell, Charles S. Albert, E. C. Matthias, Attorneys for Petitioner.

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[fol.520] [File endorsement omitted]

IN SUPERIOR COURT OF CHELAN COUNTY

[Title omitted]

Consolidated

RESPONDENTS' PROPOSED FINDINGS OF FACT—Filed Mar. 30, 1927

Comes now the respondent, Alice Barbee Wick, in cause No. 7391, appearing specially by her attorneys Peters & Powell, Robert H. Evans and Adrien W. Vollmer, pursuant to permission heretofore granted by the above entitled court, files further and supplemental Findings of Fact and Conclusions of Law:

I

That the said respondent, Alice Barbee Wick is alleged by petitioner to have been served only by publication and that said service was inadequate and insufficient, and not in the manner prescribed by law and that the court had no jurisdiction of the said respondent, Alice Barbee Wick, and of the subject matter of this suit.

II

That the Chelan Electric Company is not a public service corporation.

[fol. 521] III

That the object and purposes for which the petitioner in said cause was incorporated was not for public service.

IV

That under and by virtue of the permits recited in the petitioner's petition, the said petitioner has no right to use the waters of the said Lake Chelan and the Chelan River for the purpose of overflowing and inundating the lands of the respondents, Alice Barbee Wick, as described in said petition for the purposes mentioned in said petition, and that petitioner is not a public service corporation.

V

That part of the lands in the above entitled cause against Alice Barbee Wick, proposed to be overflowed and inundated by the petitioner is a public road or highway used for motor and other traffic not mentioned or described in said petition and that said petitioner has no right to overflow and inundate the same.

VI

That the petitioner proposes to raise the waters of Lake Chelan to a still water elevation of 1100 feet above mean sea level and that in doing so it will necessarily damage, overflow and inundate the respondent's lands above the said 1100 foot level by action of the waves, sudden freshets and other causes, and that in so doing it will violate the license from the Federal Power Commission recited by the petitioner under which the petitioner alleges it has a permit to raise the waters of Lake Chelan "to the maximum elevation of 1100 feet mean sea level."

That said permit permits the raising of the Lake for the generation of power for use only within the State of Washington as will appear by reference to the terms of said permit.

VII

[fol 522] That the Washington Water Power Company is not a party of record to the above recited cause but that the

Chelan Electric Company, the petitioner proposes to sell all of its power to said Washington Water Power Company to be used by said Company in the State of Washington and elsewhere in the United States and in the province of British Columbia and elsewhere in the Dominion of Canada, and that said Washington Water Power Company is under contract to furnish said power for interstate and intrastate purposes and commerce.

VIII

That when the power from the Chelan project is commingled with power generated from other projects both within and without the State of Washington it is impossible to segregate it or identify it.

IX

That the chief purpose of the Chelan project is to convert said Lake Chelan into a storage reservoir to take care of a shortage of power outside the State of Washington in low water season and that the amount of power generated by any plant when calculated merely in kilowatt hours produced, is no indication of its proportionate capacity to supply current during low water season.

X

That it is not necessary for the petitioner to convert Lake Chelan into a storage reservoir for the purpose of supplying any shortage in the State of Washington, as there are innumerable power sites on the Columbia River and elsewhere in the said State, available for said purpose, the development of which would improve navigation without marring one of the greatest scenic and thus economic assets of the State of Washington.

XI

That the entire output of the petitioner will not be devoted to public use, but will be sold to one customer, the Washington Water Power Company, and by it to be used for public and private purposes.

[fol. 523] XII

That sufficient power can be generated to supply the requirements of the petitioner without raising the waters of Lake Chelan above high water level of about 1085 feet above mean sea level.

XIII

That the court has no method of knowing that the Washington Water Power Company intends to, and will, conduct its electric light and power business in the future as in the past.

XIV

That the respondent, Alice Barbee Wick owns all of the shore land described in the Petitioner's petition, and that all of said shore land, excepting as stated in Petitioner's petition, was acquired prior to petitioner's alleged right to overflow and inundate certain of the shore lands of Lake Chelan up to the ordinary high water mark of 1085 feet above mean sea level.

Presented and refused this 3/30/27.

W. O. Parr, Judge.

From the foregoing Facts found the Court concludes in law as follows:

Proposed Conclusions of Law

I

That the public interest does not require the prosecution of the enterprise of the petitioner, and that the lands, real estate, premises and other property of the said respondent, Alice Barbee Wick, sought to be appropriated is not required and necessary for the purpose of said enterprise within the State of Washington.

II

That the said proposed taking of the property of the respondent Alice Barbee Wick, is without adequate and

sufficient notice and is the taking of private property for a private use and is otherwise contrary to the Constitution and Laws of the State of Washington and the United States.

III

[fol. 524] That the petitioner, having failed to personally notify the respondent, Alice Barbee Wick, and having failed to adequately describe in said petition, publication and notice, and otherwise the premises proposed to be taken, the court has obtained no jurisdiction over the person or property of the petitioner, Alice Barbee Wick.

IV

That the proposed flooding or inundating of the lands of the non-resident respondent, Alice Barbee Wick, by erosion, wave action, freshets, or otherwise, is not within the scope of the petition, notice and publication in said cause and therefore constitutes an unlawful attempt to deprive said respondent of her property without due process of law and is otherwise an unlawful attempt to take her property contrary to the Constitution and Laws of the State of Washington and the United States.

V

That said petition, notice and publication in the proceedings against the respondent, Alice Barbee Wick, are defective in that they fail to state whether a title in fee simple or an easement is proposed to be taken.

VI

That the proceedings in the said cause against said Alice Barbee Wick are defective in that the petitioner proposes to condemn a superior use for an inferior use as a county road crosses said premises.

VII

That the proposed taking of private property within the State of Washington for the purpose of supplying energy

without the State of Washington, is not for a public use and necessity.

VIII

That a substantial portion of the purposes for which the petitioner proposes to use the power generated at the Chelan [fol. 525] project is not for a public use and necessity.

Presented and refused this 3/30/27.

W. O. Parr, Judge.

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[fol. 526] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 20635

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 29, 1927

The above entitled matter coming before the court this 29th day of April, 1927, pursuant to petition or affidavit for writ of certiorari and order to show cause, heretofore issued by the court, and counsel for the respective parties having appeared; counsel for the Relator having specially appeared,

It is ordered that a writ of certiorari issue herein, returnable on June 2, 1927; that said writ shall not require any stay of proceedings in the superior court in any of the causes referred to in said petition for writ of certiorari, and shall not prevent the superior court for Chelan County from setting either, any or all of said causes for trial and trying the same, as though the said writ had not been issued, all within its discretion, it not being intended hereby to direct the trial court as to its conduct in relation to the trial of said causes; that said writ shall be in the usual form, except that it shall provide that the relators shall not be required to prepare or serve any abstract, and neither party shall be required to print any briefs, but that said briefs may be typewritten; that the relators'

brief, together with their statement of facts, shall be served upon the respondents on or before May 16, 1927, and the respondents' brief shall be served on the relators within ten days thereafter.

Done in open court this 29th day of April, 1927.

Kenneth Mackintosh, Chief Justice of Supreme Court of the State of Washington.

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[fol. 527] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 21274

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Nov. 19, 1928

To the Clerk of the above-entitled Court:

Will you please prepare a transcript of the following record in Cause 20635, and in the above-entitled cause, duly certified, for the use of the Supreme Court of the United States, on appeal, in this cause:

The following from "Transcript of Record" filed in this cause (Cause 7391 Superior Court of Chelan County):

| Paper | Date of filing in superior court |
|---|---|
| 1. Notice | Sept. 17, 1926. |
| 2. Petition | Sept. 17, 1926. |
| 3. Affidavit of service on Chelan County | Sept. 17, 1926. |
| 4. Sheriff's return on non-resident | Sept. 22, 1926. |
| 5. Affidavit for Publication | Sept. 22, 1926. |
| 6. Notice of appearance, Chelan County | Oct. 4, 1926. |
| 7. Special Appearance and Motion to Quash with affidavit of Adrien W. Vollmer attached | Oct. 8, 1926. |
| 8. Order for Continuance | Oct. 17, 1926. |
| [fol. 528] 9. Affidavit for Publication | Oct. 30, 1926. |

| Paper | | Date of filing in superior court |
|---|---|---|
| 10. | Notice of Petition and Bond for Removal | Oct. 30, 1926. |
| 11. | Petition for Removal to U. S. District Court | Oct. 30, 1926. |
| 12. | Bond on Removal | Oct. 30, 1926. |
| 13. | Affidavit of D. C. Conover | Oct. 30, 1926. |
| 14. | Objections to Removal | Oct. 30, 1926. |
| 15. | Proposed order of Removal | Oct. 30, 1926. |
| 16. | Order on Removal | Oct. 30, 1926. |

| | | Date of filing in U. S. district ct. |
|---|---|---|
| 17. | Motion to Remand | Nov. 1, 1926. |
| 18. | Notice of Removal | Nov. 1, 1926. |
| 19. | Affidavit of Edwin C. Matthias in support of Motion to Remand, Sworn to Oct. 29, 1926 | Nov. 1, 1926. |
| 20. | Order to Show Cause | Nov. 1, 1926. |
| 21. | Affidavit of Service of Motion, Order and Notice of Remand | Nov. 2, 1926. |
| 22. | Affidavit of A. M. Anderson in support of Motion to Remand | Nov. 3, 1926. |
| 23. | Affidavit of R. A. Scheble | Nov. 3, 1926. |
| 24. | Affidavit of J. A. Adams | Nov. 3, 1926. |
| 25. | Order of Remand | Nov. 3, 1926. |

| Paper | | Date of filing in superior court |
|---|---|---|
| 26. | Order of Continuance | Nov. 4, 1926. |
| 27. | Order for Continuance | Dec. 6, 1926. |
| 28. | Order for Continuance | Feb. 7, 1927. |
| 29. | Speiial appearance and Demurrer | Feb. 28, 1927. |
| 30. | Special appearance and Motion to Make More Definite and Certain | Feb. 28, 1927. |
| 31. | Order denying Motion to Quash, etc. | Feb. 28, 1927. |
| 32. | Order Overruling Demurrer | Mar. 1, 1927. |
| 33. | Order Overruling Motion to Make More Definite etc. | Mar. 1, 1927. |

| Paper | Date of filing in superior court |
|---|---|
| [fol. 529] 34. Order on Motion to Make More Definite and Certain and Bill of Particulars | Mar. 24, 1927. |
| 35. Respondent's Proposed Findings of Fact, (Woodruff, Flick and Wick) | Mar. 24, 1927. |
| 36. Notice of Presentation of Order of Consolidation, Findings of Fact, Conclusions of Law and Order of Public Use and Necessity | Mar. 24, 1927. |
| 37. Order of Consolidation, Findings of Fact, Conclusions of Law, Order of Public Use and Necessity | Mar. 24, 1927. |
| Omitting the following: Par. XIV of Findings of Fact—omit all of same down to the words "That on the 13th day of Sept. 1909," etc. Par. II of Order of Public Use & Necessity, Omit, beginning with the words "In cause 7389" down to and including the words "above mean sea level" immediately preceding Par. "III" of said Order. | |
| 38. Notice of setting for trial | Mar. 26, 1927. |
| 39. Jury Demand | Mar. 26, 1927. |
| 40. Exceptions to Findings of Fact, Conclusions of Law and Order of Public Use and Necessity Alice Barbee Wick | Mar. 29, 1927. |
| 41. Exceptions to refusal of court to sign proposed Findings of Fact and Conclusions of law, Alice Barbee Wick | Mar. 30, 1927. |
| 42. Respondent Wick's Proposed Findings of Fact | Mar. 30, 1927. |
| 43. Note of Issue | Apr. 15, 1927. |
| 44. Affidavit of Service of Note of Issue | Apr. 15, 1927. |

The following from papers on file in Cause 20635:

| Paper | Date of filing in supreme court |
|---|---|
| 45. Petition for Writ of Certiorari from Order of Public Use and Necessity | Apr. 21, 1927. |
| 46. Order on Motion to show cause | Apr. 21, 1927. |
| 47. Affidavit of Service of Order to Show cause | Apr. 25, 1927. |
| 48. Order advancing hearing | Apr. 25, 1927. |

The following from papers on file in this cause:

| Paper | Date of filing in superior court |
|---|---|
| 49. Bill of Particulars | Apr. 27, 1927. |

[fol. 530] The following papers on file in cause 20635:

| Paper | Date of filing in supreme court |
|---|---|
| 50. Affidavit of service of Order | Apr. 29, 1927. |
| 51. Proof of Service (Wm. A. Grimshaw) | Apr. 29, 1927. |
| 52. Affidavit of Adrien W. Vollmer | Apr. 29, 1927. |
| 53. Order granting Writ of Certiorari | Apr. 29, 1927. |
| 53-A. Writ of Certiorari | Apr. 29, 1927. |
| 54. Motion for Stay of Proceedings with Notice and Affidavit of J. L. Baldwin thereto attached | June 14, 1927. |
| 55. Affidavit of Edwin C. Matthias in resistance to Motion for Stay | June 17, 1927. |
| 56. Order Denying Motion for Stay | June 23, 1927. |

The following from papers on file in this cause:

| Paper | Date of filing in superior court |
|---|---|
| 57. Notice of Petition and Bond on Removal | June 27, 1927. |
| 58. Petition for Removal to U. S. District Court with affidavit of Adrien W. Vollmer thereto attached | June 27, 1927. |

| Paper | Date of filing in superior court |
|---|---|
| 59. Bond on Removal | June 27, 1927. |
| 60. Proposed Order of Removal | June 27, 1927. |
| 61. Order Denying Petition for Removal | June 28, 1927. |
| 62. Respondent Wick's proposed Instructions | June 30, 1927. |
| 63. Court's Instructions | June 30, 1927. |
| 64. Verdict and Answer to Interrogatories | June 30, 1927. |
| 65. Respondent Wick's Exception to Instructions | July 2, 1927. |
| 66. Motion for New Trial | July 2, 1927. |
| 67. Respondent's Wick's Additonal Exceptions to Instructions | July 7, 1927. |
| 68. Affidavit of Adrien W. Vollmer in Support of Motion for New Trial | July 7, 1927. |
| 69. Order striking affidavit of Adrien W. Vollmer and denying Motion for New Trial | July 9, 1927. |
| 70. Judgment on Verdict | July 9, 1927. |
| 71. Decree of Appropriation | July 9, 1927. |
| 72. Notice of Appeal | Aug. 2, 1927. |

[fol. 531] From papers on file in Cause 20635:

| Paper | Date of filing in supreme court |
|---|---|
| 73. Opinion (Affirmed) | Sept. 1, 1927. |
| 74. Order Denying Rehearing | Oct. 13, 1927. |
| 75. Judgment | Oct. 13, 1927. |
| 76. Remittitur | Oct. 13, 1927. |
| 77. Writ of Error, U. S. Supreme Court | Jan. 9, 1928. |
| 78. Petition for Writ of Error with Notices to join therein and affidavits of service thereof attached | Jan. 9, 1928. |
| 79. Assignment of Errors | Jan. 9, 1928. |
| 80. Order Allowing Writ of Error | Jan. 9, 1928. |

| Paper | Date of filing in supreme court |
|---|---|
| 81. Memorandum of Giving of Bond | Jan. 9, 1928. |
| 82. Citation on Writ of Error with Proof of Service | Feb. —, 1928. |
| From papers on file in this cause: | |
| 83. Opinion (affirmed) | July 31, 1928. |
| 84. Judgment entered | Sept. 4, 1928. |
| 85. Remittitur | Sept. 4, 1928. |
| 86. Petition for Appeal to U. S. Supreme Court, with notices to join in appeal and affidavits of service thereof, attached (original) | Oct. 10, 1928. |
| 87. Assignment of Errors (original) | Oct. 10, 1928. |
| 88. Order Allowing Appeal (Original) | Oct. 10, 1928. |
| 89. Bonds on Appeal (2) Copies | Oct. 10, 1928. |
| 89½. Ratification of Attorney's Act etc. (In re bond) | |
| 90. Citation on Appeal with Proof of Service (Original) | 1928. |
| 91. Petitioner's Exhibit No. 27. (License to Chelan Electric Company from Federal Power Commission—Project 637, Washington, with Certificate of O. C. Merrill attached) | |
| 92. Oral Decision of Superior Court, p. 489 &c. Part 2, Statement of Facts (Cause 20635) | |
| 92½. Decree of Appropriation dated Jan. 4th, 1915, and Certificate, Exh. 26 | |
| 93. This Præcipe, with proof of service | |

Adrien Winston Vollmer, Adrien Winston Vollmer, Attorney for Alice Barbee Wick, Appellant.

[fol. 532] Receipt of copy and service of the foregoing Præcipe admitted this 7th day of November, 1928.

Chelan Electric Company, by V. G. Shinkle, Secretary. Post & Russell, Edwin C. Matthias, Charles S. Albert, Attorneys for Appellee.

Due service of the foregoing Præcipe admitted and receipt of copy acknowledged this Fifth day of November, 1928.

J. A. Adams, Pros. Atty. Chelan Co.

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[fol. 532½] In Supreme Court of Washington

No. 21274

[Title omitted]

Return of Service of Præcipe

United States of America,
Eastern District of Washington, ss:

I hereby certify that I served the annexed Præcipe for Alice Barbee Wick, Appellant, on the there-in-named Chelan Electric Company, a corporation, by handing same to and leaving a true and correct copy thereof with V. G. Shinkle, (Secretary Chelan Electric Company), personally at Spokane, Washington in said District, on the 7th day of November, A. D. 1928.

D. T. Ham, United States Marshal, by S. C. Sibley, Deputy.

[fol. 533] Return of Service of Præcipe

United States of America,
Western District of Washington, ss:

I hereby certify that I served the annexed Præcipe for Alice Barbee Wick, appellant, on the there-in-named Chelan Electric Company, a corporation, by handing same to and leaving a true and correct copy thereof with Edwin C. Matthias, Atty. of Record for Chelan Electric Co. personally at Seattle, in said District on the 2 day of Nov. A. D. 1928.

E. B. Benn, United States Marshal, by E. E. Gaskill, Deputy. (Seal.)

Fees and Ex., $2.20.

[fol. 534] In Supreme Court of Washington, Department Two, July 31, 1928

No. 21274

Chelan Electric Company, Respondent,

v.

Alice Barbee Wick, Appellant; Chelan County, Respondent

Opinion

This appeal is from the final award and judgment for damages in favor of appellant in condemnation proceedings.

This court has already passed upon most of the questions involved herein and have heretofore adjudged that the appropriator was entitled to appropriate and condemn as for public use and necessity. State ex rel. Woodruff v. Superior Court, 145 Wash. 129, 259 Pac. 379.

In other cases we have decided most of the questions, including Federal questions, raised upon this appeal that could have been available to appellant. State ex rel. Chelan Elec. Co. v. Superior Court, 142 Wash. 270, 253 Pac. 115; State ex rel. Flick v. Superior Court, 144 Wash. 124, 257 [fol. 535] Pac. 231; State ex rel. Woodruff v. Superior Court, supra; State ex rel. Perry v. Superior Court, 145 Wash. 178, 259 Pac. 382.

Upon such appeals, we have many times decided that under our statute, Rem. Comp. Stat., relating to appeals from such judgments for damages, no questions can be raised or determined in this court except questions relating to the propriety and justness of the amount of the damages awarded. Western American Co. v. St. Ann Co., 22 Wash. 158, 60 Pac. 158; Seattle & M. R. Co. v. Bellingham Bay & Eastern R. Co., 29 Wash. 491, 69 Pac. 1107, State ex rel. McCormick v. Superior Court, 43 Wash. 91, 86 Pac. 205; State ex rel. Port Townsend Southern R. Co. v. Superior Court, 44 Wash. 554, 87 Pac. 814; State ex rel. Pagett v. Superior Court, 46 Wash. 35, 89 Pac. 178; State ex rel. Grays Harbor Logging Co. v. Superior Court, 100 Wash. 485, 171 Pac. 238.

[1] Motions are made by respondents to strike the statement of facts and dismiss the appeal.

Unfortunately for appellant, the statement of facts herein must be stricken, although a very strong showing is made to excuse the failure to file the proposed statement of facts in the cause within ninety days after the entry of the judgment. For some reason it failed to reach the clerk of the lower court so as to be filed within the ninety days after the entry of the judgment. Judgment was filed and entered in the lower court on June 9, 1927. The statement of facts was not filed by the clerk of that court until October 8, 1927, which was on the ninety-first day after the entry of the judgment. There are undisputed and wholly trustworthy affidavits in the record by attorneys and their office assistants, who had had the matter in charge for appellant, of a diligent effort to get the statement of facts mailed from Seattle and delivered at Wenatchee, the county seat of Chelan county, within the ninety days. The statement of facts is shown to have been mailed in Seattle on October 6 and in the ordinary course of mail operation, as shown by undisputed affidavits of operatives at Seattle, it should have reached Wenatchee on October 7 at not later than 3:00 p. m. and have been delivered to the clerk of the court on that date in time for him to have filed it in his office.

Nevertheless, under our uniform decisions we are unable to grant appellant relief. It has always been held that the time for filing and serving a proposed statement of facts or bill of exceptions cannot be extended beyond ninety days from the entry of the judgment or order appealed from, because the statute is mandatory. It is a jurisdictional prerequisite. Therefore, when the proposed statement of facts was filed more than ninety days after the time of appeal began to run, it was wholly unauthorized and a nullity. State v. Terrien, 111 Wash. 345, 190 Pac. 1017; State ex rel. Soudas v. Brinker, 128 Wash. 319, 222 Pac. 615; State v. Harder, 130 Wash. 367, 227 Pac. 501.

Regretfully, therefore, the statement of facts is striken.

Upon this condition of the record, respondent contends that there is nothing more to consider, this being an appeal from the condemnation award and judgment.

We desire, however, not to close the way absolutely to a review by the United States supreme court, and to give appellant a final judgment on the merits.

[2] Appellant contends that the validity and propriety of certain instructions should be considered on this appeal.

We have held, contrary to the contention of appellant, that error in instructions to the jury cannot be reviewed on appeal in the absence of the evidence or any statement of facts on appeal from which it can be ascertained that the instructions were prejudicial to the appellant under the testimony produced and the verdict rendered. Morgan v. Bankers Trust Co., 63 Wash. 476, 115 Pac. 1047. And that, in the absence of the statement of facts, the court cannot review the evidence. Boh v. Boh, 133 Wash. 300, 233 Pac. 648.

Appellant insists, however, that certain of the instructions set out in the transcript are erroneous on their faces and prejudicial to appellant; that they should be reviewed and the judgment reversed and remanded for a new trial by reason thereof. In order to assure no injustice in the cause, we have examined the instructions assailed and find that as to those in which it is contended the court commented upon the facts, the court did no more than state facts which were conclusively shown by the record and established as properly shown by the record in the former Chelan Electric Co. cases cited, supra.

[fol. 536] As to those contended to have been argumentative, they did no more than declare that the appropriation was for a public use and the public interest required the prosecution of the enterprise, which we deem to be no more than stating that the use was for the public benefit.

[3] Another contention made by appellant in this appeal is new, involves, if valid, an ultimate Federal question, and is entitled to be considered.

It is insisted that the trial court erred in not granting applications for removal of the cause to the Federal court having local jurisdiction.

The case had been on trial from June 23, 1927, and upon the petitioner resting on June 27, appellant filed her petition for removal to the Federal court without any notice to Chelan County and without notice to the condemning petitioner, other than its presentation in court. After argu-

ment, the application was denied. Petitioner was then allowed to reopen its case, introduce additional testimony relating to tax payments and tax liens in favor of Chelan county, tending to show that Chelan county was a necessary and indispensable party to the proceedings, and rested again. Appellant then made a second motion to remove the cause to the Federal court.

The Federal statute, §29 of the U. S. Judicial Code (§72, Title 28 of the U. S. Code Ann.) requires that written notice of the petition and bond for removal shall be given the adverse party or parties prior to filing the same. This was not done.

The application was neither properly nor timely made.

The supreme court of the United States has held that a case arising under the laws of the United States, non-removable on the complaint, when commenced, cannot be converted into a removable one by evidence of the defendant or by an order of the court upon any issue tried upon the merits, but that such conversion can only be accomplished by a voluntary amendment of his pleadings by the plaintiff or, where the case is not removable because of joinder of defendants, by the voluntary dismissal or nonsuit by him of a party or parties defendant. Great Northern R. Co. v. Alexander, 246 U. S. 276.

In this case, there had been a previous removal by appellant to the Federal district court, which was by that court remanded to the state superior court. We held in State ex rel. Woodruff v. Superior Court, supra, that that remand was proper and that there was no improper rejoinder of parties. No claim was made in either removal application that there was a fraudulent purpose to defeat removal. In the Alexander case, supra, it was held that where there is no claim of fraudulent attempt to evade removal, the grounds for removal were to be determined by the allegations of the complaint or petition; that if the case was not then removable, it could not be made removable by any statement in the petition for removal or in subsequent pleadings by the defendant.

We think the Alexander case, supra, answers all the contentions made by appellant here upon this subject.

Upon the record as it is, no other errors claimed by appellant are available to her.

The judgment is therefore affirmed.

Halcomb.

Fullerton, C. J., Askren, Main, and Beals, JJ., concur.

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[fol. 537] In Supreme Court of Washington

No. 21274

Clerk's Certificate

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing are full, true and correct copies of such part of the record called for by the præcipe of appellant heretofore inadvertently omitted from the transcript in the above-entitled cause.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, this 4th day of February, 1929.

C. S. Reinhart, Clerk. (Seal.)

[fol. 537½] [File endorsement omitted.]

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[fol. 538] In Supreme Court of the United States

Motion for an Extension of Time Within Which to File Record and Order Extending Time—Filed Dec. 31, 1928

To the Honorable George Sutherland, Associate Justice of the Supreme Court of the United States:

Your petitioner, Alice Barbee Wick, respectfully presents this, her application for an extension of time within which to file the record upon an appeal from the Supreme Court of the State of Washington in the above entitled cause, and in support thereof presents the following:

That the appeal was allowed by the Supreme Court of the State of Washington on the 8th day of October, 1928.

The præcipe for the making up of the record was promptly filed with the clerk of the court, and the counter præcipe filed by the appellee November 6, 1928.

On December 4, 1928, an order was passed by the Supreme Court of the State of Washington extending the time for filing of the record until January 1, 1929. This order has been duly filed with the clerk of this Court.

Your petitioner has communicated with the clerk of the Supreme Court of the State of Washington requesting that she be advised when the record was ready to go forward, but up to this time has received no reply, and the time for filing the record expires today unless the same is fur-
[fol. 539 & 539½] ther extended.

Wherefore your petitioner prays that the time within which the record on appeal in the above entitled cause may be filed in this Honorable Court be extended to and including January —, 1929.

Joseph D. Sullivan, Counsel for Petitioner.

[fols. 540 & 540a] Order Extending Time Within Which to File Record

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown, it is now here Ordered that the time within which the record on appeal may be filed herein, be and the same is hereby extended to and including January 15th, 1929.

Geo. Sutherland, Associate Justice of the Supreme Court of the United States.

Dated this 1st day of December, 1928.

[fol. 540b] [File endorsement omitted.]

[fol. 541] In Supreme Court of Washington

No. 21274

[Title omitted]

Order Extending Time—Filed in U. S. Supreme Court Jan. 10, 1929

It appearing to the court that the appellant has been granted a writ of error from the United States Supreme Court to this court in the above entitled cause, and the time in which record is due to be filed has about expired, and the record not having been completed, it is hereby ordered that the time for filing the record be extended to the 21st day of January 1929.

Done in open court this 28th day of December 1928.

Emmett N. Parker, Acting Chief Justice.

[fol. 541a] Certificate to foregoing paper omitted in printing.

[fol. 541b] [File endorsement omitted.]

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Olympia, Washington, January 16, 1929.

[fol. 542] Joseph D. Sullivan, Atty., 900 F Street N. W., Washington, D. C.; Joseph B. Thomas, Atty., 26 South 15th Street, Philadelphia, Pa.; Adrien W. Vollmer, Atty., P. O. Box 1165, Portland, Oregon; Charles S. Albert, Atty., King St. Passenger Station, Seattle, Washington.

Gentlemen: I am forwarding today to the Clerk of the United States Supreme Court the transcript in re Chelan Electric Company vs. Miss Wick.

Yours very truly, C. S. Reinhart, Clerk.

[fols. 543 & 543½] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD —Filed Jan. 21, 1929

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which the record on appeal may be filed herein, be and same is hereby extended to and including Jany. 26th, 1929.

Geo. Sutherland, Associate Justice of the Supreme Court of the United States.

Dated this 21st day of January, 1929.

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[fol. 544] IN SUPREME COURT OF THE UNITED STATES

MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE RECORD—Filed Jan. 21, 1929

To the Honorable George Sutherland, Associate Justice of the Supreme Court of the United States:

Your petitioner, Alice Barbee Wick, respectfully presents this, her application for an extension of time within which to file the record upon an appeal from the Supreme Court of the State of Washington in the above entitled cause, and in support thereof presents the following:

That the appeal was allowed by the Supreme Court of the State of Washington on the 8th day of October, 1928.

The praecipe for the making up of the record was promptly filed with the clerk of the court, and the counter praecipe filed by the appellee November 6, 1928.

Orders have been filed with the clerk of this court for the extension of time up to and including January 21, 1929.

The clerk of the Supreme Court of the State of Washington has written a letter to the attorney for your petitioner, dated January 16, 1929, received January 21, 1929, in which [fols. 545 & 545a] he states that the record was forwarded January 16 to the clerk of the Supreme Court of the United States, but the same had not arrived today.

Wherefore your petitioner prays that the time within which the record on appeal in the above entitled cause may be filed in this Honorable Court be extended to and including January 31, 1929.

Joseph D. Sullivan, Counsel for Petitioner.

[fol. 545b] [File endorsement omitted.]

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[fol. 546] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND PARTS OF RECORD NECESSARY FOR CONSIDERATION—Filed Feb. 2, 1929

Points to be Relied on

1. The notice by publication to appellant, Alice Barbee Wick, did not constitute due process of law under the provisions of the 14th Amendment to the Constitution of the United States.

Assignments of Error I, II, III, VII, and VIII.

2. The Statute of the State of Washington, providing for service on nonresidents in condemnation cases by publication (Remington's Compiled Statutes, Ed. of 1922, Sec. 922) is in conflict with the due process of law clause of the 14th Amendment to the Constitution of the United States.

Assignments of Error VII and VIII.

3. The statutes of the State of Washington, under which the condemnation of the land was sought, are in conflict with Article III, Section 2, paragraph 1, and Article IV, Section 2, and the 14th amendment of the Constitution of the United States.

Assignment of Error VIII.

4. The purpose for which the land was sought to be condemned did not constitute a public use, and that accordingly appellant's land was taken contrary to the 14th Amend-[fol. 547] ment to the Constitution of the United States.

Assignment of Error IX.

5. The statutes of the State of Washington, permitting the property of this appellant to be taken for the use for

which the Chelan Electric Co. proposes to take appellant's property, permit the taking of land for a private use and are therefore in conflict with the due process of law clause of the 14th Amendment to the Constitution of the United States.

Assignments of Error II, IX.

6. The petition contained no adequate description of the land to be taken, nor did it disclose whether the corporeal property or an easement was to be acquired, and for this reason the proceeding was contrary to the 14th Amendment and to Article III, Section 2, paragraph 1, and Article IV, Section 2, of the Constitution of the United States.

Assignments of Error I, II, XIV, XVI.

7. The extent of the land appropriated was in excess of that sought in the petition and authorized by the Federal Power Commission.

Assignments of Error XIII, XVI.

8. The court erred in instructing the jury that the Electric Co. were seeking only an easement, and that appellant would retain all rights and privileges incident to ownership not inconsistent with an easement.

Assignment of Error XIV.

9. The court erred in permitting the Chelan Electric Co. to file a bill of particulars after a motion for a bill of particulars had been denied, and after the order for public use and necessity had been entered.

Assignment of Error XII.

10. The court erred in refusing to find that the instructions to the jury granted, were argumentative and conflict-
[fol. 548] ing, and in refusing to grant the instructions prayed by appellant.

Assignment of Error XV.

11. The statutes of the State of Washington, providing that taxes upon real estate are a lien upon the land one year before they are permitted to be paid, are in conflict with Article III, Section 2, paragraph 1 of the Constitution of the United States.

Assignments of Error IV, VI.

12. The appellant was improperly deprived of her right to have the cause removed to a Federal Court.

Assignments of Error V, X, XI and XII.

[fol. 549] Parts of Record Necessary for Consideration


| | | Page |
|---|---|---|
| 1. | Petition | 4 |
| 2. | Return on nonresidents | 12 |
| 3. | Affidavit for publication | 13 |
| 4. | Special appearance and motion to quash and vacate with affidavit of Adrien W. Vollmer (affidavit omitted through error and to be supplied) | 15 |
| 5. | Affidavit of publication and notice published | 19 |
| 6. | Notice of petition and bond for removal | 21 |
| 7. | Petition for removal | 23 |
| 8. | Objections to removal | 29 |
| 9. | Order removing cause | 32 |
| 10. | Motion to remand | 33 |
| 11. | Affidavit of E. C. Matthias | 36 |
| 12. | Order granting motion to remand | 46 |
| 13. | Special appearance and demurrer | 51 |
| 14. | Motion to make more definite and certain | 54 |
| 15. | Order denying motion to quash, etc. | 56 |
| 16. | Order overruling demurrer | 57 |
| 17. | Order overruling motion to make more definite | 58 |
| 18. | Respondent's proposed findings of fact (as given on page 61 of record part is omitted in error) | 241 |
| 19. | Order of consolidation, etc. | 62 |
| 20. | Exceptions to findings of fact | 83 |
| 21. | Exceptions to refusal of court | 87 |
| 22. | Respondent's proposed findings of fact (Part omitted in error and to be supplied) | 90 |
| 23. | Order on motion to make more definite and certain | 59 |
| 24. | Note of issue | 94 |
| 25. | Order allowing Writ of Certiorari (Omitted in error and to be supplied) | |
| 26. | Motion for stay of proceedings | 265 |
| [fol. 550] 27. | Order denying stay | 274 |
| 28. | Opinion of the court | 347 |
| 29. | Judgment on certiorari | 349 |

| | | Page |
|---|---|---|
| 29a. | Notice of petition for removal (Omitted in error and to be supplied) | |
| 30. | Petition for removal | 275 |
| 31. | Bond on removal | 280 |
| 32. | Proposed order of removal | 281 |
| 33. | Order denying removal | 283 |
| 34. | Instructions to jury requested | 287 |
| 35. | Instructions to jury given | 292 |
| 36. | Verdict | 321 |
| 37. | Exceptions to instructions given to jury, etc | 322 |
| 38. | Motion for a new trial | 326 |
| 39. | Additional exceptions to instructions | 328 |
| 40. | Judgment on verdict | 333 |
| 41. | Decree of appropriation | 340 |
| 42. | Notice of appeal | 346 |
| 43. | Opinion on appeal of Supreme Court, State of Washington. (Omitted in error and to be supplied) | |
| 44. | Judgment on appeal | 348½ |
| 45. | Assignments of error | 399 |
| 46. | Order allowing appeal | 405 |
| 47. | Memorandum of bond given on appeal | 411 |
| 48. | Memorandum of citation and service on appeal | 414 |


Joseph D. Sullivan, Attorney for Appellant.

[fols. 551 & 551a] DISTRICT OF COLUMBIA, SS:

Joseph D. Sullivan, being first duly sworn, says that on the 1st day of February, A. D. 1929, he mailed by registered mail, postage prepaid, copies of the statement of points to be relied on and parts of the record necessary for consideration above set out, addressed to Edwin C. Matthias, 302 King Street Passenger Station, Great Northern Railway, Seattle, Washington, one of the attorneys of record for the appellee in the above named proceeding, and affiant attaches hereto the receipt issued by the Post Office Department to him for such registered letter.

Joseph D. Sullivan.

Subscribed and sworn to before me this 2nd day of February, 1929. Eleanor L. Marron, Notary Public, D. C. (Seal of Eleanor L. Marron, Notary Public, District of Columbia.)

(Postmark of) Washington (F Street Sta), D. C. Registered. Feb. 1, 1929.

Receipt for Registered Article No. 870387.

Registered at the Post Office indicated in Postmark.

Fee paid: — cents. Class postage: —.

Return Receipt fee: —. Spl. Del'y fee: —.

Delivery restricted to addressee, —— ——, in person, or order, —— ——.

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per —— —— (Mailing office).

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Claims must be filed with postmasters within one year from date of mailing.

Form 3806. c 5—6852.

[fol. 551b] [File endorsement omitted.]

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[fol. 552] In Supreme Court of the United States

Designation of Additional Parts of Record to be Printed —Filed Feb. 13, 1929

To the Clerk of the above-entitled Court:

The respondents designate the following additional parts of the record which they think material and which they desire to have printed by the Clerk as part of the printed record:

| | Filed superior court |
|---|---|
| 1. Notice of filing condemnation petition | Sept. 17, 1926 |
| 2. Sheriff's return on non-resident | Sept. 22, 1926 |

Filed in superior court

3. Order for Continuance ..... Oct. 17, 1926
4. Affidavit of Publication ..... Oct. 20, 1926

Filed U. S. dist. ct.

5. Order to show cause ..... Nov. 1, 1926
6. Affidavit of A. M. Anderson in support of Motion to Remand ..... Nov. 3, 1926
7. Affidavit of R. A. Scheble ..... " " "
8. " " J. A. Adams ..... " " "

Filed superior ct.

9. Order of Continuance ..... Nov. 4, 1926
10. " " " ..... Dec. 6, 1926
11. " " " ..... Feb. 7, 1927
12. Order on Motion to Make More Definite and Certain and for Bill of Partic ... March 24, 1927
13. Notice of Presentation of Order of Consolidation, Findings of F., Conclusions of Law and Order of Pub. Use and Necessity ..... March 24, 1927
14. Notice of setting for trial ..... March 26, 1927
15. Bill of Particulars ..... April 27, 1927
16. Affidavit of Edwin C. Matthias in resistance to Motion for Stay ..... June 17, 1927

[fol. 553] 17. Remittitur ..... Oct. 13, 1927

18. Petitioner's Exhibit No. 27, (License to Chelan El. Co. from Federal Power Commission, Project 327, Washington, with certificate of O. O. Merrill attached).
19. The following from "Transcript of Record," filed in Cause 21274 (Cause 7391, Superior Court of Chelan County) objection of Chelan County to removal of cause to U. S. Court, filed June 27, 1927 in Superior Court Chelan County.
20. List of docket entries in the Superior Court of Chelan County with date of filing from Sept. 17, 1926 to Sept. 1, 1927.
21. List of docket entries in the Superior Court of Chelan County, Sept. 1, 1927 to April 20, 1928.
22. Objection of Chelan County to removal of cause 7391 to the U. S. District Court filed June 27, 1927.
23. Notice of withdrawal of D. C. Conover as attorney in cause 7391, Superior Court Chelan County, filed Feb. 28, 1928.

24. Order Supreme Court of Wash. striking the statement of facts in this cause, 21274.
Thomas Balmer, Edwin C. Matthias, Charles S. Albert, Attorneys for Respondents.

[fol. 554] [File endorsement omitted.]

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Endorsed on cover: File No. 33,961. Washington Supreme Court. Term No. 652. Alice Barbee Wick, appellant, vs. Chelan Electric Company. Filed January 25th, 1929. File No. 33,961.